S. HRG. 101-952

NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT (REPATRIATION); NATIVE AMERICAN REPATRIATION OF CULTURAL PATRIMONY ACT; AND HEARD MUSEUM REPORT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 1021

TO PROVIDE FOR THE PROTECTION OF INDIAN GRAVES AND BURIAL GROUNDS

AND

S. 1980

TO PROVIDE FOR THE REPATRIATION OF NATIVE AMERICAN GROUP OR CULTURAL PATRIMONY

MAY 14, 1990
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NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT (REPATRIATION); NATIVE AMERICAN REPATRIATION OF CULTURAL PATRIMONY ACT; AND THE HEARD MUSEUM REPORT

MONDAY, MAY 14, 1990

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:06 p.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Conrad, and McCain.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Today, the committee will take up the matter of repatriation of human remains and cultural patrimony.

In 1987 this committee held a hearing on S. 187, a bill to provide a process for the repatriation of Native American human remains and cultural patrimony. At that time, the representative of the American Association of Museums asked the committee if we would consider delaying action on the measure before us for 1 year while the museum community attempted to fashion a dialog with representatives of the Indian community to see whether they could together develop a policy to guide the repatriation of Native American remains and cultural patrimony. The committee agreed and that dialog proceeded. Their report was submitted to this committee in February of this year.

I believe that we all recognize the value of the work carried out by the museums. When we visit museums and look at the remnants of past civilizations we are really learning about ourselves and how our societies and civilizations have evolved. Museums enhance our quality of life. As enlightened people, we welcome scientific enquiry and the opportunity to know more about ourselves.

Accordingly we welcome the preservation and scientific purposes that museums fulfill. Our discussion this afternoon is therefore not about the validity of museums or the value of scientific enquiry. Rather, this discussion is about human rights.

American society has been more than fair in accommodating the desires of the scientific community. When the Army Surgeon General ordered the collection of Indian osteological remains during the second half of the 19th century, his demands were enthusiastically met by not only Army medical personnel, but by collectors who made money by selling Indian skulls to the Army Medical Museum.

The desires of Indians to bury their dead were ignored. In fact, correspondence from individuals engaged in robbing graves often speaks of the dangers these collectors faced when Indians caught them digging up burial grounds.

When human remains are displayed in museums or historical societies, it is never the bones of white soldiers or the first European settlers that came to this continent that are lying in glass cases. It is Indian remains. The message that this sends to the rest of the world is that Indians are culturally and physically different from and inferior to non- Indians. By any definition, this is racism.

In light of the important role that death and burial rites play in Native American cultures, it is all the more offensive that the civil rights of America's first citizens have been so flagrantly violated for the past century. Even today, when supposedly great strides have been made to recognize the rights of Indians to recover the skeletal remains of their ancestors and to repossess items of sacred value or cultural patrimony, the wishes of Native American are often ignored by the museum and scientific communities.

In cases where Native Americans have attempted to regain items that were inappropriately alienated from the tribe, they have often met with resistance from museums and have not had the legal ability or financial resources to pursue the return of the goods. It is virtually only in instances where a museum has agreed for moral or political reasons to return the goods that tribes have had success in retrieving property. Tribes have had similar difficulties in preventing the excavation and sale of goods that unscrupulous collectors have acquired.

The Smithsonian Institution set a national precedent for museums last year when it agreed to the repatriation provisions contained in the legislation to create a National Museum of the American Indian, but that bill was the result of many hearings by this committee and tireless negotiations between Smithsonian officials and Native Americans. The Smithsonian was courageous in its action and set a standard which I hope will be followed by other museums and institutions in this country.

We are here today to seek a restoration of rights that have for so long been denied. We will be fair and just in our proceedings and are not here to chastise anyone who is honest and who acts in good faith and in compliance with the law.

We will hear today from a number of witnesses representing different points of view on repatriation issues. We will hear from the Administration on repatriation policies that were recently adopted by the Department of the Interior.

We will hear from the participants of the Heard Museum National dialog, where museum professionals including archaeologists and anthropologists met with Native Americans to see if it was possible to arrive at a mutually acceptable resolution to the issue of repatriation. The meetings took place over the course of a year and the final report of the group is very, very encouraging.

We will next hear from representatives of the museum community, including museum directors, archaeologists, and anthropologists. Finally, we will hear from those who have waited so patiently for their day in court, the Native American community.

II

101st CONGRESS
1st Session

S. 1021

To provide for the protection of Indian graves and burial grounds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 17 (legislative day, January 3), 1989

Mr. McCain introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the protection of Indian graves and burial grounds, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Native American Grave and Burial Protection Act".

FINDINGS

Sec. 2. The Congress finds that—

(1) numerous agencies and instrumentalities of the Federal Government, as well as State and private museums which receive Federal funding, have in their possession the skeletal remains of Native Americans;

(2) some of these skeletal remains are readily identifiable as to tribal origin and, in other instances, tribal origin can be inferred with reasonable certainty;

(3) Indian tribes have expressed a clear and unequivocal interest in acquiring these skeletal remains for purposes of reinterment or other disposition which is consistent with tribal religious or cultural practices;

(4) it is necessary to develop an effective mechanism to provide for the respectful return of these skeletal remains;

(5) numerous Federal agencies have jurisdiction over Federal lands which contain the skeletal remains of Native Americans, associated grave offerings, and sacred ceremonial objects;

(6) numerous institutions have gained control over skeletal remains, associated grave offerings, and sacred ceremonial objects by virtue of Federal funding of archeological and other projects on non-Federal lands;

(7) confusion exists over who should rightfully have control or ownership over skeletal remains and ownership of associated grave offerings and sacred ceremonial objects, which are located on, or which have been disinterred from, Federal lands; and

(8) it is necessary to clarify ownership interests in Native American items located on tribal and Federal lands.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "Native American" means any individual who is—

(A) an Indian,

(B) an Alaska Indian, Eskimo, or Aleut, or

(C) a Native Hawaiian.

(2) The term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.

(3) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "tribal land" means—

(A) all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation,

(B) all dependent Indian communities, including lands conveyed to Native Corporations pursuant to the Alaska Native Claims Settlement Act, within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 and section 4 of Public Law 86–3 (48 U.S.C. 491, note preceding).

(5) The term "grave goods" means any object which was found in the grave of, or is otherwise directly associated with the skeletal remains of, a Native American.

(6) The term "sacred ceremonial object" means any specific item which is, or has been, devoted to a Native American religious ceremony and which is essential for the continuing observance of such religious ceremony.

(7) The term "museum" means any museum, university, government agency, or other institution receiving Federal funds which possesses or has control over

any Native American skeletal remains or sacred ceremonial objects.

CONSENT REQUIREMENT

SEC. 4. (a) Notwithstanding any other provision of law, it shall be unlawful for any person to sell, use for profit, or transport from one State to another State any skeletal remains of a Native American, any grave goods, or any sacred ceremonial objects without the express written consent of—

(1) in the case of remains and grave goods, the heirs of the Native American, or

(2) in the case of sacred ceremonial objects or in the case of remains or grave goods for which the heirs of the Native American cannot be ascertained, the governing body of the Indian tribe of which the Native American was a member or from which such grave goods or objects originated.

(b) Any person who knowingly violates subsection (a) shall, upon conviction, be fined not more than $10,000 per violation.

OWNERSHIP

SEC. 5. (a) Any skeletal remains of a Native American, any grave goods, or any sacred ceremonial objects which are excavated or discovered after the date of enactment of this Act shall be disposed of according to the wishes of—

(1) in the case of remains and grave goods, the heirs of the Native American, or

(2) in the case of sacred ceremonial objects or in the case of remains or grave goods for which the heirs of the Native American cannot be ascertained, the governing body of the Indian tribe of which the Native American was a member or from which such grave goods or objects originated.

(b) Any skeletal remains and grave goods of a Native American for whom the heirs cannot be ascertained, and any sacred ceremonial objects, that are found on Federal or tribal land shall be considered to be owned by the Indian tribe—

(1) which has jurisdiction over the reservation on which such items were discovered,

(2) which aboriginally occupied the area from which such items were discovered,

(3) in the case of remains and grave goods, of which the Native American was a member,

(4) in the case of grave goods or sacred ceremonial objects, from which such grave goods or objects originated, or

(5) which can show a cultural affiliation with such items.

(c) Nothing in this section shall prevent an Indian tribe from expressly relinquishing title to any skeletal remains, grave goods, or sacred ceremonial objects.

ACTIONS BY FEDERAL AGENCIES

SEC. 6. (a) By no later than the date that is 2 years after the date of enactment of this Act, any agency or instrumentality of the Federal Government which has possession or control of any skeletal remains of a Native American, any grave goods, or any sacred ceremonial object shall compile an inventory of all of such items in its possession or control and, to the extent possible, identify such items as to the Indian tribe of which the Native American was a member or from which the items originated.

(b)(1) By no later than the date that is 3 years after the date of enactment of this Act, each Federal agency and instrumentality described in subsection (a) shall provide to the governing body of each Indian tribe notice of any skeletal remains of a Native American, grave goods, or sacred ceremonial objects that are associated with the Indian tribe and are in the possession or control of the agency or instrumentality. The notice shall contain—

(A) a list which identifies each of such items and the circumstances surrounding the acquisition of the item, and

(B) a list of items that are not definitely identifiable as being associated with that Indian tribe but which, given the totality of circumstances surrounding the acquisition of the item, make it more likely than not that the item originated with that Indian tribe or that the skeletal remains are of a member of that Indian tribe.

(2) A copy of each notice provided under paragraph (1) shall be sent to the Secretary of the Interior who shall publish a list of all the notices in the Federal Register.

(c)(1) By no later than the date that is 1 year after the date on which notice is provided to an Indian tribe by a Federal agency or instrumentality under subsection (b)(1), the Indian tribe shall decide which, if any, of the remains, grave goods, or sacred ceremonial objects it agrees to accept and shall notify the Federal agency or instrumentality of such decision and of the place, date, and manner of delivery that the Indian tribe has chosen.

(2) Notwithstanding any other provision of law, upon receiving notice of acceptance of items by an Indian tribe under paragraph (1), the Federal agency or instrumentality shall return such items to the Indian tribe unless such items—

(A) were acquired with the express consent of the Indian tribe or the legitimate Native American owners of such items, or

(B) are indispensable for the completion of a specific scientific study, the outcome of which would be of major benefit to the United States.

(3) If an Indian tribe provides notice of acceptance of items to a Federal agency under paragraph (1) and the items are not returned to the Indian tribe by reason of a scientific study described in paragraph (2)(B), the Federal agency shall return the items to the Indian tribe by no later than the date that is 90 days after the date on which the scientific study is completed.

ENFORCEMENT

SEC. 7. The United States district courts shall have jurisdiction over any action brought by an heir of a Native American or by an Indian tribe alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

ACTIONS REQUIRED FROM CERTAIN MUSEUMS

SEC. 8. (a) By no later than the date that is 2 years after the date on which a written request for the return of skeletal remains, grave goods, or sacred ceremonial objects is submitted by the governing body of any Indian tribe to a museum which receives Federal funds, the museum shall return to the Indian tribe any skeletal remains of a Native American who was a member of the Indian tribe, and any grave goods or sacred ceremonial object which originated from the Indian tribe, that are in the possession or control of the museum unless—

(1) such items were acquired with the consent of the Indian tribe or the Native American owners of such items, or

(2) such skeletal remains are indispensable for the completion of a specific scientific study, the outcome of which would be of major benefit to the United States.

(b) If an Indian tribe makes a written request to a museum for the return of items under subsection (a) and the items are not returned to the Indian tribe by reason of a scientific study described in subsection (a)(2), the museum shall return the items to the Indian tribe by no later than the date that is 90 days after the date on which the scientific study is completed.

(c) Notwithstanding any other provision of law, any museum that fails to comply with the provisions of this section shall no longer be eligible to receive any Federal funds.

○

101st CONGRESS
1st Session

S. 1980

To provide for the repatriation of Native American group or cultural patrimony.

IN THE SENATE OF THE UNITED STATES

November 21 (legislative day, November 6), 1989

Mr. Inouye introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the repatriation of Native American group or cultural patrimony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Native American Repatriation of Cultural Patrimony Act".

DEFINITIONS

Sec. 2. For purposes of this Act—

(1) The term "Native American" means an Indian, Alaska Native, or Native Hawaiian.

(2) The term "Indian" means an individual who is a member of an Indian tribe, including any individual who is an Alaska Native.

(3) The term "Alaska Native" means any Eskimo, Aleut, or Alaska Indian.

(4) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act).

(5) The term "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(6) The term "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians, and

(B) has as a primary and stated purpose the provision of services to Native Hawaiians.

(7) The term "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as a part of the death rites

or ceremonies of a culture, the remains of a deceased Native American.

(8) The term "funerary object" means any artifact or object—

(A) which was intentionally placed with a deceased Native American, either at the time of burial or interment or at some subsequent time, as a part of the death rites or ceremonies of a culture, and

(B) which—

(i) is reasonably associated with human remains subject to return pursuant to section 3, or

(ii) has been identified, through available evidence, as having been removed from a specific burial site.

(9) The term "Federal agency" means any department, agency, or instrumentality of the Federal Government, including (but not limited to) the Smithsonian Institution.

(10) The term "Native American group" means any nation, tribe, band, village, or community of Native Americans.

(11) The term "Native American sacred object" means an object, including (but not limited to) any

dead or live animal or animal part, plant or plant part, mineral, or other substance, that is imbued with sacred character or has ceremonial or ritual importance in the practice of a Native American religion.

(12) The term "Native American group or cultural patrimony" means an item having historical, traditional or cultural importance to the Native American group or culture which is associated with the Native American group itself, rather than property owned by any individual Native American, and which, therefore, cannot be legally alienated, appropriated or conveyed by any individual Native American regardless of whether or not the individual is a member of the Native American group.

(13) The term "museum" means any person or State or local government agency (including any institution of higher education) that receives Federal funds and has possession of, or control over, human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony. Such term does not include the Smithsonian Institution or any other Federal agency.

(14) The term "Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization, incorporated under the laws of the State of

Hawaii by that name on April 17, 1989, the purpose of which is to provide guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(15) The term "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the Constitution of the State of Hawaii.

REPATRIATION OF NATIVE AMERICAN GROUP OR CULTURAL PATRIMONY

SEC. 3. (a)(1) Each Federal agency, and each museum, that has possession or control over holdings or collections of Native American sacred objects or items of Native American group or cultural patrimony, including human remains and funerary objects shall, in consultation and cooperation with traditional Indian and Native Hawaiian religious leaders and tribal government officials, initiate a process for the inventory of such remains and objects and for the investigation, to the fullest extent possible, of the geographic and tribal origins of such remains and objects.

(2)(A) The inventories and investigations that are required to be conducted under paragraph (1) shall be completed by no later than March 31, 1992.

(B) The identification of human remains and objects conducted under paragraph (1) shall be based upon the best available scientific and historical documentation.

(3) If the identification process conducted under paragraph (1) has established by a preponderance of the evidence the Indian tribal origin of any particular human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, the Federal agency or museum shall, by no later than June 30, 1992, cause the affected Indian tribe or tribes to be notified of such identification.

(4) If the identification process conducted under paragraph (1) has established by a preponderance of the evidence the Native Hawaiian origin of any particular human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, the Federal agency or museum shall, by no later than June 30, 1992, cause notice of such identification to be made to appropriate Native Hawaiian organizations with expertise in Native Hawaiian affairs (which may include the Office of Hawaiian Affairs and the Malama I Na Kupuna O Hawai'i Nei).

(b)(1)(A) If a preponderance of the evidence establishes that human remains in the possession or control of a Federal agency (other than the Smithsonian Institution) are of a particular Indian, or are of an individual who was culturally affiliated with a particular Indian tribe, the Federal agency, upon request of the known descendants of such Indian, or such Indian tribe, as the case may be, shall expeditiously return such remains, and any funerary objects associated with such remains, to such descendants or Indian tribe.

(B) If a preponderance of the evidence establishes that human remains in the possession or control of a Federal agency (other than the Smithsonian Institution) are of a particular individual who is believed to be Native Hawaiian, the Federal agency, upon the request of the known descendants of such individual or the request of an appropriate Native Hawaiian organization described in subsection (a)(4), shall expeditiously return such remains, and any funerary objects associated with such remains, to such descendants or organization.

(2)(A) If a preponderance of the evidence establishes that funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, in the possession or control of a Federal agency (including the Smithsonian Institution), not associated with any human remains, were removed from a specific burial site of an individual, or other site, culturally affiliated with a particular Indian tribe, the Federal agency, upon the request of such Indian tribe, shall expeditiously return such objects to such Indian tribe.

(B) If a preponderance of the evidence establishes that funerary objects in the possession or control of a Federal agency (other than the Smithsonian Institution), not associated with any human remains, were removed from a specific burial site of an individual believed to be a Native Hawaiian, the Federal agency, upon the request of the descendants of such individual or the request of an appropriate Native Hawaiian organization described in subsection (a)(4), shall expeditiously return such objects to such descendants or organization.

(c)(1) If a Native American, an Indian tribe, or a Native Hawaiian organization described in subsection (a)(4), requests that a museum return any human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, that are in the possession of, or under the control of, the museum, the burden shall be upon the museum that has possession or control of the remains or objects to prove by a preponderance of the evidence that the museum has legal title to the remains or objects.

(2) If a museum does not satisfy the burden of proof described in paragraph (1) with respect to any remains or objects, the burden shall then be upon the Native American, Indian tribe, or Native Hawaiian organization described in subsection (a)(4), that requested the return of the remains or objects to prove by a preponderance of the evidence that—

(A) the remains or funerary objects are of an individual who is an ancestor of the Native American or was culturally affiliated with the Indian tribe or Native Hawaiian organization, or

(B) the Native American, Indian tribe, or Native Hawaiian organization once owned or possessed the funerary object, the Native American sacred objects, or the items of Native American group or cultural patrimony.

(3) If—

(A) the museum having possession or control over any human remains of a Native American, Native American sacred objects, funerary objects, or items of Native American group or cultural patrimony does not satisfy the burden of proof described in paragraph (1), and

(B) the Native American, Indian tribe, or Native Hawaiian organization described in subsection (a)(4), that requested the return of the remains or objects satisfies the burden of proof described in paragraph (2) with respect to the remains or objects,

the museum shall expeditiously return the remains or objects to the Native American, Indian tribe, or Native Hawaiian organization.

(d)(1) Within 120 days after the date of enactment of this Act, the Secretary of the Interior shall establish a committee to monitor and review the implementation of the inventory and identification process required under subsection (a) and the restoration activities required under subsection (b).

(2) The committee established under paragraph (1) shall be composed of 7 members, 4 of whom shall be appointed from nominations submitted by Indian tribes, Indian organizations, and Native Hawaiian organizations described in subsection (a)(4). None of the persons appointed to the committee shall be Federal employees or officials.

(3) The committee established under paragraph (1) shall be responsible for—

(A) monitoring the inventory and identification process conducted under subsection (a) to ensure a fair, objective consideration and assessment of all available relevant information and evidence,

(B) reviewing, upon its own motion or upon the request of any affected party, any finding relating to—

(i) the identity or origin of human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony, or

(ii) the return of such remains or objects,

(C) arbitrating disputes between Indian tribes relating to the return of such remains or objects,

(D) consulting with Native Hawaiian organizations described in subsection (a)(4) on matters within the scope of the work of the committee affecting Native Hawaiians; and

(E) performing such other related functions as the Secretary may assign to the committee.

(4) The Secretary shall ensure that the committee established under paragraph (1), and the members of the committee, have full and free access to human remains and funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony under review and to associated scientific and historical documents.

(5) Members of the committee established under paragraph (1) shall be reimbursed at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including traveltime) for which the member is actually engaged in committee business and for travel, subsistence, and other necessary expenses.

(6) The Secretary shall—

(A) designate one of the members of the committee established under paragraph (1) as chairman,

(B) establish such rules and regulations for the committee as may be necessary, and

(C) provide reasonable administrative and staff support necessary for the deliberations of the committee.

(7) The committee established under paragraph (1) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

(8) The committee established under paragraph (1) shall terminate at the end of the 120-day period beginning on the day on which the Secretary of the Interior certifies, in a report submitted to the Congress, that the work of the committee has been completed.

(e) Nothing in this section shall be interpreted as—

(1) limiting the authority of any Federal agency or museum to return or repatriate human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony to Indian tribes or individuals or to Native Hawaiian individuals or organizations,

(2) delaying actions on repatriation requests that are pending on the date of enactment of this Act,

(3) denying or otherwise affecting access to the courts,

(4) limiting any procedural or substantive rights which may otherwise be secured to Indian tribes or in-

dividuals or to Native Hawaiian individuals or organizations, or

(5) taking, transferring, or affecting the legal title, or legal rights, of any museum to any human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony.

(f)(1) The Secretary of the Interior is authorized to make grants to Indian tribes for the purpose of assisting such Indian tribes in reaching and implementing agreements with Federal agencies, and non-Federal entities, for the repatriation of human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony.

(2) The Secretary of the Interior is authorized to make grants to Native Hawaiian organizations described in subsection (a)(4) for the purpose of assisting such organizations in reaching and implementing agreements with Federal agencies, and non-Federal entities, for the repatriation of human remains, funerary objects, Native American sacred objects, or items of Native American group or cultural patrimony.

(3) The Secretary of the Interior is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and investigations required under subsection (a).

(g) There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

EXCAVATIONS

SEC. 4. (a) If a Native American group, or any member of a Native American group, asserts an interest in any human remains, Native American sacred objects, or funerary objects, which have been excavated pursuant to a permit issued by any Federal agency, the head of the Federal agency that issued the permit shall repatriate such human remains and objects to such Native American group or the member, upon request, notwithstanding any other provision of law or any permit issued under any other provision of law.

(b)(1) Notwithstanding any other provision of law, human remains of a Native American, Native American sacred objects, and funerary objects shall not be considered archaeological resources for purposes of any provision of law other than a provision that imposes a civil or criminal penalty for the unauthorized excavation, removal, damage, or destruction of archaeological resources.

(2) Notwithstanding any other provision of law, the human remains of a Native American, Native American sacred objects, and funerary objects shall not be disturbed without the express consent of the governing body or representatives of the Native American group that is culturally affiliated with such human remains or sacred objects.

(3)(A) The Secretary of the Interior shall prescribe regulations that provide for the repatriation to the appropriate Native American group of any human remains of a Native American, Native American sacred objects, or funerary objects which may have been excavated under the authority of any Federal law or under any permit issued by a Federal agency; but only after consultation with Native American governmental and religious leaders.

(B) The absence of regulations described in subparagraph (A) shall not preclude the repatriation of human remains, sacred objects, and funerary objects to the appropriate Native American groups on a case-by-case basis.

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The **CHAIRMAN**. I believe that the vice chairman of this committee who has worked hard and long on this issue would like to make a statement.

Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator **McCAIN**. Thank you, Mr. Chairman.

I would like to welcome all of the witnesses here today to testify before our committee on the issues surrounding the repatriation of human remains and funerary objects of Native Americans as well as Native American sacred objects and items of cultural patrimony.

The subject of repatriation is charged with high emotions in both the Native American community and the museum community. Our committee has been very active in efforts to bring both sides closer to agreement on these very difficult issues.

For the past year, representatives of the museum community, including archaeologists and anthropologists, met with tribal representatives to discuss the repatriation of human remains and other objects of cultural and religious significance from museum collections. The fruit of these discussions is the Heard Museum report, and we will hear from some of the participants in those discussions today.

Another milestone was reached this past year when the President signed into law legislation which established a museum for the American Indian. As part of this legislation, an agreement was reached with the Smithsonian to repatriate the Native American human remains and funerary objects currently contained in their collections. It is my hope that the hearing today will continue this dialog and that we will be able to have frank and open exchanges of ideas as to how to best address these issues.

I am very interested in hearing from each of the witnesses here today their views regarding my proposed substitute amendment to S. 1980, the Native American Grave Protection and Repatriation Act. I am prepared to work with each of you to develop legislation which balances the interests of Native Americans and the rightful and respectful return of their ancestors with the interests of the Nation's museums in maintaining our rich cultural heritage, the heritage of all American people. Above all, I am interested in a process that provides the dignity and respect that our Nation's first citizens deserve.

Mr. Chairman, I would like to recognize and welcome several distinguished Arizonans who are here for our hearing today: Philip Thompson, the Director of the Museum of Northern Arizona; Keith Kintigh from Arizona State University; Governor Thomas White from the Gila River Indian Community, and Paul Bender, former Dean of the Arizona State University Law School and a Trustee of the Heard Museum of Phoenix, Arizona.

Welcome—and I would be remiss if I did not take a moment now to recognize the substantial commitments made by the trustees of the Heard Museum and the personal commitment of Mr. Michael Fox, the former Director of the Heard Museum, to facilitate and coordinate the discussions between museum professionals and

Native American leaders. These discussions have formed the basis of the report we have before us today and provide a framework in which to proceed with future legislation. Again, my heartfelt thanks for your good work and dedication on these very important issues.

Last, but certainly not least, I want to express my deep gratitude to our Chairman, Senator Inouye, for once again providing the patient and diligent leadership which has enabled us all to make substantial progress in this area. With your leadership, Mr. Chairman, I am certain that we will be able to secure Senate passage of S. 1980 during this session.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much for your kind words and I would like to join you in commending the officials of the Heard Museum for providing us with the platform which we discussed. We have taken great strides toward resolving this matter.

Our first witness is the Associate Director of Cultural Resources of the National Park Service, Department of the Interior, Jerry L. Rogers.

Mr. Rogers, it's good to have you with us.

STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR, CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. ROGERS. Mr. Chairman, thank you very much. It is a pleasure to be here and I look forward to continuing to interact with this committee on the resolution of these important issues.

My statement is brief, but I would like to have the formal statement admitted into the record, if you don't mind.

The CHAIRMAN. Without objection, so ordered.

Mr. ROGERS. I will simply say that while I wish the statement were a little more definitive at the present time, it essentially says that the Administration has yet to complete a thorough review of the draft substitute for S. 1980 that has recently been developed by committee staff. Therefore, we are not prepared to take a position on the legislation until the interagency review has been completed. You can expect that review and a report on the subject within the next few weeks.

I do want to tell you that the Department of the Interior is very interested in the issue and we believe that there is good reason for optimism that we can solve the issue within the reasonably near future. Secretary of the Interior Manuel Lujan has a deep and abiding personal interest in the resolution of the issues surrounding Native American heritage. In fact, he has directed the National Park Service to take specific steps to revise the existing Department of the Interior and National Park Service policy governing human remains and associated funerary objects in a manner that would be more sensitive to the wishes of Native Americans who are culturally affiliated with those materials and to make it clearer how and under what circumstances we are prepared to repatriate such remains.

Secretary Lujan took this initiative in a public statement about 5 weeks ago and has urged the National Park Service to move forward on it. We will probably take the balance of this calendar year just in the course of consultations with American Indians and other Native Americans on the subject before we are prepared to draft a policy.

That is because of the requests that we have received from our Native American associates themselves who have advised us not to try to do something quickly and to take great care to make certain that we are not consulting with only a handful of people but rather with a broadly representative group. We intend to do that.

We also have taken as a general philosophy the guidance in the legislation creating the Museum of the American Indian, and we believe that that is a reasonable basis for Department of the Interior policy, although some individuals with whom we have consulted have urged us to go beyond that point. All I can tell you on that is that we are listening.

I would be very happy to answer any questions, Mr. Chairman, if I could.

[Prepared statement of Mr. Rogers appears in appendix.]

The CHAIRMAN. I thank you very much for your report. I am looking forward to the report of the interagency group, but in the meantime, at present, what is the policy of the Government of the United States relating to the repatriation of human remains?

Mr. ROGERS. First of all, I think it is important to understand that each agency makes its own policy depending upon the direction of statutes, so that there is no single policy that guides all Federal agencies. However, it is true that Federal agencies frequently—in fact, I would say generally—adopt the basic guidelines in the Department of the Interior policy for dealing with cultural resources. The Secretary of the Interior's policy, I think, is more important than just some other agency head's policy would be.

The present policy states that we are prepared to repatriate human remains. However, I think that the wording of the policy is such that it implies a difficult negotiation process. It is one that American Indians themselves have generally believed to be not conducive to repatriation. Actually, we are only undergoing a modification of that policy to make it clearer that we are willing to deal with this as a human rights issue, as the Chairman eloquently stated it.

The CHAIRMAN. At the present time, is there a policy for the repatriation of Indian remains and a policy for the return of non-Indian remains?

Mr. ROGERS. There is not a separate policy, but I think that one of the things that Secretary Lujan wants us to make certain of is that we have a single policy that deals with all human remains in the same way regardless of ethnic derivation. I think that is very clearly what is needed.

The CHAIRMAN. By that do you mean that there are two policies?

Mr. ROGERS. No, sir; I do not mean that there are two policies, but I think that we would have to acknowledge that in some cases there have been two practices.

The CHAIRMAN. What have the two practices been? Could you describe them?

Mr. ROGERS. For example, I think of the archeological investigations that the National Park Service conducted at Custer Battlefield National Monument 3 years ago. Fragments of human bodies were recovered and these were almost all fragments of the bodies of soldiers who had been killed in the fight and had been hastily buried a few days after the fight and then their remains had been recovered and moved to their present resting places some time afterward. Some fragments of those bodies were missed in that last move.

We discovered several of those and we studied them, which is, frankly, what I think we should do. We should try to gain that information which it is possible to gain. Then after doing that, we reburied them with honors in the grave where the rest of the human remains from the soldiers killed in the battle are buried. That is one practice.

I do not believe that we generally follow that practice when we are dealing with prehistoric and sometimes even late historic sites dealing with American Indians. I believe that a resolution that treats all human remains the same regardless of ethnic derivation should be one that is satisfactory to all parties.

The CHAIRMAN. So at this battle ground, we returned the remains of the soldiers and buried them with honors. What happened to the remains of Indians that were discovered at the same battle site?

Mr. ROGERS. The remains of Indians were not discovered in this archeological investigation. Basically, this was an investigation to identify the remains that were left on the battlefield at the end of the fight. The Indian remains that were left on the battlefield in those circumstances would have been only a very few Indians who happened to be allied with the United States Army at the battle.

The Indians who were in the encampment that Custer attacked—those bodies were recovered by their families and friends and disposed of in their way right after the battle. We don't know where they are.

The CHAIRMAN. Thank you very much, sir.

Senator McCain.

Senator MCCAIN. Mr. Rogers, you stated that there is no single policy in the Federal Government; that each department has a different policy. Is that correct?

Mr. ROGERS. There is no overall policy that every agency has to follow.

Senator MCCAIN. So obviously, there is a need for one.

Mr. ROGERS. Senator McCain, I believe that there is a need and I believe that the Secretary's modifications are likely to be adopted in general.

Senator MCCAIN. Good—but there is a need for one, correct?

Mr. ROGERS. Yes, sir.

Senator MCCAIN. You stated that you would not be able to come up with some definitive recommendations for the remainder of this year. Is that correct?

Mr. ROGERS. That is because of the advice we have received from our American Indian friends to be very extensive in our consultations.

Senator MCCAIN. Mr. Rogers, have you had an opportunity to review the so-called Heard Museum report?

Mr. ROGERS. Yes, sir; I have.

Senator McCAIN. Are you aware that every major Native American organization in this country supports those recommendations with the exception of the issue as to what to do with unidentified Native American remains?

Mr. ROGERS. I am generally aware of that. Of course, I think that particular issue is the one big unanswered question as of today.

Senator McCAIN. Yes; but if you accept the fact that all of the Native American groups in this country have endorsed the Heard Museum recommendations with one exception, is it then going to take you a year to resolve that one remaining issue?

Mr. ROGERS. I think that one remaining issue is an awfully big one, basically, the one on which we decide what to do with materials that are not identifiable as culturally affiliated. That is a fairly substantial portion of the human remains, but I do want to emphasize, Senator—sure, I could go into a room and write a policy and it wouldn't take me very long to do it, but it might not have very much credibility regardless of the outcome if I don't do the consultation I have been advised to carry out.

Senator McCAIN. I do not disagree with that, Mr. Rogers, but the work has been done.

Mr. ROGERS. The only thing I can say, Senator, is that the museum report was in the hands of the very people who were giving me this advice on the day when I made a promise to them that we would not do a hasty revision.

Senator McCAIN. Can you tell me who those individuals were?

Mr. ROGERS. There were several of individuals who had been present at a meeting of the National Congress of American Indians who came over to visit with us.

Senator McCAIN. Can you give me the names of any of those individuals? I would like to talk with them.

Mr. ROGERS. I think that Mr. Flute is in the room. He was among the people who spoke with me on that day.

Senator McCAIN. Thank you.

You do agree that there is no single policy as far as the Federal Government is concerned. You do agree that there have been two separate practices, as you responded to Senator Inouye's questions. And you do agree that there is only one remaining issue. Is that correct?

Mr. ROGERS. Well, there may be more than one remaining issue, but there is one very large remaining issue.

Senator McCAIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Conrad.

Senator CONRAD. Thank you very much, Mr. Chairman.

Mr. Rogers, welcome.

It is my understanding that the tribes' position is that they would like to have the remains returned to them for proper burial. Is that your understanding of the tribes' position?

Mr. ROGERS. That is the position of many tribes. I do not think that is a universally held position.

There are tribes that do not want the materials returned at all. There are tribes that want them returned for ceremonial reburial in a manner that will allow the material to continue to deteriorate. There are groups that would be willing to have the materials returned and held in a tribal museum under curatorial circumstances.

I guess that what I am getting at is that there is a very broad spectrum of possible outcomes. I think that once we have gotten past the very basic point of treating everyone the same, we will be able to come to some very reasonable accommodations on many of those points.

Senator CONRAD. When you talk about treating everyone the same, are you talking about a policy that, no matter what the source of the remains, all of them would be dealt with in precisely the same way?

Mr. ROGERS. We should deal with people as people, living or dead. We should not deal with one segment of our population differently than we deal with another segment of the population, living or dead.

Senator CONRAD. Could you give me some idea from your vantage point—what percentage of the tribes would like the remains returned to the tribes? Is it an overwhelming percentage?

Mr. ROGERS. I don't think I know enough about that to give you a reasonable estimate at this time. I believe that the wishes of the tribes range very, very broadly as I said a little while ago. I am sorry I can't be more specific.

Senator CONRAD. So at this point, you don't have a perception of what the predominance of opinion would be?

Mr. ROGERS. The perception that I have is that the predominance of opinion is that tribes, first, want Indian human remains treated the same as all others; second, they want to be asked about the disposition of human remains that are affiliated with them. They want to be asked about study of those remains and associated materials. They want to be asked for consent before we undertake recovery of archeological sites that include human remains or other sacred materials.

They want access to the information that is derived from the study of these materials. It should be to their benefit more than to anyone else's. Those are the general perceptions that I have.

Senator CONRAD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Rogers. You have been very candid with your responses and for that, I am most appreciative.

Mr. ROGERS. Thank you, Mr. Chairman.

The CHAIRMAN. We look forward to the report after the interagency group has come to a conclusion.

Mr. ROGERS. And we look forward to continuing to interact with this committee and its staff to work out solutions to these problems.

The CHAIRMAN. Thank you very much.

I have been advised that one of the witnesses has to get on a flight in order to get home, so I will call him out of order. He is a Trustee of the Bishop Estate in Honolulu, Hawaii, Myron Thompson. Mr. Thompson wishes to speak on an amendment that is being offered by Native Hawaiians and Native Alaskans to the measure being considered at this time.

Mr. Thompson.

STATEMENT OF MYRON THOMPSON, TRUSTEE, BISHOP ESTATE, HONOLULU, HI

Mr. Myron Thompson. Mr. Chairman and members of the committee, I want to thank you for allowing me to testify today and for your courtesy in allowing me to get on a plane to get back home this afternoon.

Mr. Chairman, I would like to take this opportunity to suggest that consideration be given by your committee to funding of projects that would assist Native Alaskans and Native Hawaiians in locating cultural patrimony and rare artifacts. A member of Senator Ted Stevens' staff mentioned this idea to me recently, and I am here to strongly support the concept.

For us, there is need to locate and inventory artifacts which have significant cultural and traditional value. This would require the compilation of an inventory.

One such inventory was partially completed by a Kamehameha Schools librarian on her sabbatical. She searched throughout a good portion of Europe and tells us that manpower and funds are needed to complete the European inventory and to embark on the same for the United States, the Pacific Nations, and Asia.

I have been advised that a similar endeavor would be appropriate for our fellow Native Alaskans. Therefore, I ask your consideration for such an initiative.

I would also like to take this opportunity to share with you the progress of the Native Hawaiian Culture and Arts Program of which I am a trustee—a program made possible by your committee. The program is developing with depth and vision.

The mission of the Native Hawaiian Culture and Arts Program is dedicated to making a meaningful and continuing contribution to the well being of Native Hawaiian people through the perpetuation of traditional culture and values. A 15 year plan has been developed to re-articulate Hawaiian history and three significant phases are our focus.

No. 1, is the exploration; no. 2, is the settlement of Hawaii by Polynesians; and no. 3, is the long-term adaptation of Hawaiians to their island world. Through the examination of Hawaiian traditions and practices associated with these phases, it is the aim of the plan to re-articulate history with new interest in Hawaiian practices and traditions to demonstrate their relevance to contemporary society.

The exploration phase of the plan examines the ancient voyaging canoe and its effect on society. Every area of traditional Polynesian culture was touched by the canoe. Its construction, provisioning, and launching brought together the efforts and talents of the entire community.

As the highest technological achievement of Polynesian society, it stimulated development and production in traditional arts and crafts and inspired activities in spiritual and daily life with ceremoneys, rituals, chants, and dances. Craftsmen, artisans, healers, and laymen all contributed to the production and sailing of the ancient canoe. To revive these areas of traditional culture and reawaken awareness of the Polynesian seafaring heritage, this exploration phase will focus on construction, testing, and sailing of a new voyaging canoe built with materials available to our ancient ancestors.

This brings me to an interesting relationship between the Native Alaskans and the Native Hawaiians. Throughout history, drift logs from the Northwest have come ashore in the Hawaiian Islands. In ancient times, the chiefs of these islands recognized the beauty and strength of these logs and used them to construct sailing canoes. Early European explorers of Hawaii such as Cook and Vancouver recorded seeing these Hawaiian canoes crafted from Northwest logs.

Ancient Hawaiian voyaging canoes were primarily constructed of the Native wood koa. Our recent extensive searches for koa trees in Hawaii were unsuccessful. Only 5-10 percent of our Native koa forests exist today, and introduced exotic plants, parasites, and an out of balance ecosystem are killing these forests.

Knowing that logs from the Northwest were available to the Polynesian canoe builders, we turned to the Alaskan Indians for help through their Sealaska Corporation. Those discussions have led to the beginning of a relationship which connects the Hawaiian people and the Alaskan Indians. They have generously donated the logs from which we will build our canoe.

What began as a problem for the Hawaiians was solved by the Alaskan Indians and has resulted in a bonding of the two Native American peoples. We have begun cultural exchanges through participation in traditional ceremonies and dance festivals, and it is our intention to nurture this relationship.

Mr. Chairman, we thank the committee for authorizing our program. Again, I appreciate this opportunity. Working together, we shall ensure that more Native Hawaiians will once again become active and fruitful contributors to our society.

Thank you very much.

The CHAIRMAN. Your suggestion of an amendment to fund a survey of artifacts and remains that may be in collections is a good one. I don't think it should be limited to just Hawaiians and Alaskans because some of the great collections are in Europe—I think the most valuable items are presently found in London. It is the same thing with Indians and I think that all of us should know where these sacred and valuable items are presently resting.

If the people of the United States knew where they were, then a special effort might be made to repatriate them. Your suggestion is a good one.

Mr. Myron Thompson. Thank you very much, Mr. Chairman. My remarks related to the American Indians also.

The CHAIRMAN. Thank you very much, sir.

Now we have a panel consisting of the Trustee of the Heard Museum in Phoenix, Mr. Paul Bender, and the President of the Field Museum of Natural History in Chicago, Dr. Willard Boyd.

We will begin with Mr. Bender.

STATEMENT OF PAUL BENDER, TRUSTEE, HEARD MUSEUM, PHOENIX, AZ

Mr. BENDER. I am Paul Bender. Thank you very much for the kind words about the Heard Museum and about the dialog panel.

In turn, the museum and its Goldwater Center would like to thank the committee for listening so carefully to our report and for giving us the chance to conduct the dialog.

Mike Fox is unable to be here today. He asked me to convey to you personally his thanks for letting this process go forward. I think it has proved to be a successful one and it was only able to be that because of the committee's indulgence in our process.

My role here today is to try to summarize for you, as facilitator of the dialog panel, what the panel's recommendations were. You have the panel's report, and I won't try to go through all of it. There are a few points that I think should be emphasized.

I have submitted a written statement and I hope that can be part of the record as well as the panel's report.

The CHAIRMAN. We have received all of your statements and I assure you that the statements will be part of the record in their entirety.

Mr. BENDER. Thank you.

The dialog process was a very interesting one for me. At the beginning of the dialog, if you had asked the members of the panel whether they could reach agreement on most of the issues, I think the answer would have been no. They perceived that they had vastly differing views. Nevertheless, after some difficulty in getting started, when the members of the panel started talking to each other directly about the issues, it turned out that there was an amazing amount of agreement.

As you know, the panel ended up with a very strong consensus on all of the issues except for some small dissent on two issues. I think that the reason that happened is that this panel represented the first time that these constituencies had really sat down and talked to each other. The main thing that has struck me about the repatriation issue in the United States in the recent and far past is that there had been a marked lack of communication among the various parties.

I think that the main procedural recommendation that the panel came up with is that that kind of communication needs to be fostered, encouraged, and I think, even compelled. The panel believes that every issue about the treatment and disposition of Native American remains, funerary objects, religious objects, and items of cultural patrimony—every one of those decisions needs to be made in concert with the interested Native American groups.

Flowing out of that discussion process will probably come agreement on most issues. There will certainly come a relaxation of the tensions that have plagued this process and, also, a tremendous amount of value to the museum community, which for too long in too many areas has been operating without the help of the cultural groups that are affiliated with the materials that the museums have.

I was glad to see in the draft of S. 1980, which was distributed a few days ago, a provision that required museums and other institutions to make inventories in consultation with Native American groups. I would like to suggest that that kind of consultative process be put even more strongly into the legislation so that whenever a request for repatriation—and it doesn't even have to be a request for repatriation—whenever a request of any kind about sensitive

Native American materials in a museum collection is made, the first thing that should happen is that the museum should sit down with the interested tribal groups and talk about it in an open way. That has not happened very much in this country and in the few museums where it has happened, the Heard being one of them, I think that the museums as well as the Native American community have benefited tremendously from that.

I have attached to my statement a draft of a bill that is now pending before the Arizona Legislature which does just that. It provides for the Director of the Arizona State Museum to preside over those kinds of discussions whenever requests for repatriation or changes in the treatment of materials are made.

Perhaps in S. 1980, it would be possible for members of the Review Committee established by that bill to try to facilitate that discussion. I can't emphasize too strongly the absence of that kind of discussion in the past and the need for that kind of discussion to take place in the future if this issue is going to be put behind us.

The central substantive recommendation of the dialog panel is what you might characterize as a principle of tribal determination of the disposition of culturally affiliated materials. That is, the majority of the panel believes that the tribe should not only have a full partnership role in discussions, but also in the decision making. If the discussions do not result in agreement, then the views of the tribe which is culturally affiliated with the materials must be followed.

This recommendation flows from a principle that the Chairman and Senator McCain have made reference to already today. That is that this is a human rights issue. It is a human rights issue because museums only have this material as a result of human rights violations.

If the Native American population in this country had been treated equally, with full respect, over the past 100-150 years, then these materials would not have been collected in the way they were. For the museums to continue to keep them over the objections of tribes from which they were taken without the tribe's full, free, voluntary consent, is a continuing human rights violation. That was the view that a very strong consensus of the panel agreed upon.

That led the panel to its conclusion that the tribe must be given the right to determine the disposition of these materials today. The panel's recommendations, therefore, are in agreement with the general direction of S. 1980, which is to give culturally affiliated groups the right to require repatriation of sensitive materials.

There are three related points that I think might be worth some attention as you consider further the language of the present draft. First of all, some of the language of the present draft suggests that the choice is between full repatriation or reburial and leaving the materials where they are in full control of the museum.

There are a lot of other kinds of solutions that can be talked about and that can be reached if the concerned parties get together to discuss things. For example, it might be possible to return materials to the tribes under conditions that would permit access to scientists in the future if the need should arise.

Some tribes may not want some materials returned. They may want to leave them with museums, but would perhaps like to have control over the way that the materials are handled in the museums, the way the materials are displayed, whether they are displayed or not, and what kinds of things are said about them when they are displayed.

I think that it would be better if the legislation could affirmatively recognize that it is this kind of cooperative working out of a mutually agreeable solution that is important and that the solutions do not have to be either repatriation or nothing. There are a lot of in between possibilities.

Second, the current draft seems to me to permit either Federal agencies and museums—or perhaps only museums and other non-Federal institutions—the right to retain materials over the objections or contrary to the wishes of an affiliated group, if the museum can prove legal title to the materials. The term "legal title" is not defined in the legislation.

That is a very troubling provision depending upon what "legal title" means. If "legal title" means that something was acquired from a tribal official or an individual who had authority to alienate the material and who alienated it voluntarily and with full knowledge of what he or she was doing, then I don't think the panel would have difficulty with the concept that museums should be able to keep that material over the current wishes of the tribe. Very little material was acquired in that way, however.

If you say, without providing a definition, that a museum showing "legal title" can keep material, probably what you are doing is remitting those materials to State law definitions of what "legal title" is. I don't think that is the right policy to have in a Federal statute. I think there should be a uniform policy on this issue throughout the country.

Some State definitions of title might be such that most repatriation requests would be frustrated or denied. I think that would be a shame.

Dr. Boyd is going to say in a little while, I think, that he is worried about doing that—that is, departing from State concepts of title—because of the *ex post facto* nature that would have. I don't think that is a serious concern for a number of reasons.

No. 1; it is not an *ex post facto* situation. That concept only applies to criminal laws or penalties, and this is not that. No. 2; I think it is very, very unlikely that we have a concept in this country that you can acquire property in human remains or funerary objects or other inalienable items. I don't think, therefore, that there is a strong property interest in these materials in the museums. No. 3; the legislation that you are considering does not require museums to do anything. It simply conditions Federal funding on their doing that. If a museum feels that the title concepts of State law are more important to it than the policies of the Federal Government, it can reject the Federal funding and keep the materials, and finally; in the present draft there is another exception for materials that are indispensable for the completion of a scientific study, the outcome of which would be of major benefit to the United States. That is a little troublesome also.

In the first place, I think it would be good to have a time limit on those studies. The way it is now, those studies could go on for 10, 15, 30, or 40 years. Academic studies tend to go on as long as they possibly can unless a time limit is imposed. Even then, they tend to go on beyond the time limit.

I think there ought to be a fairly short time limit. If the study needs more time, then there ought to be a provision for applying for an extension of time, which again would have to be brief.

Second, as far as process goes, the need for a scientific study should not be determined by the museum or the scientific community unilaterally. That is the very kind of issue that needs to be talked about with the Native American community. I think the current bill could make it clearer that there has to be that kind of discussion of that issue.

Finally, if it comes down to scientific needs versus the tribe's claim that it wants the materials back or that it does not want to have scientific work done on the materials, I find it hard to think that the scientific value should predominate over what is a very strong human rights concern. Science is important, but I think that human rights are even more important.

The most difficult issue for the dialog panel was the treatment of unaffiliated or unidentified remains. A majority of the panel finally concluded after a tremendous amount of discussion that the human rights principle even there requires that those remains be given a decent burial within a finite period of time.

I was delighted to see in the present bill that the Review Committee that is being set up was given the task of trying to work out such a process for reburial of unaffiliated remains. I think that is the right way to treat that issue. There are difficult problems associated with it and I don't think the rest of this legislation should be held up until those problems are solved.

Again, it may be appropriate to have scientific work done on those unaffiliated remains. However, the panel majority believes that that work should only be done with the consent of the Native American community.

On behalf of the panel, let me thank you again for considering the panel's process and views. As I said, S. 1980 in its current draft seems to be heading in a direction that I think will properly resolve most aspects of what has been a divisive issue for much too long a time.

I think that the passage of this legislation will create a new era in museum/Native American relations by emphasizing a tradition of cooperation between the two communities, which is going to lead to much better museums and finally to putting to rest the tremendous resentment that has grown up because of the fact that affiliated groups have not been given control over the materials with which they are affiliated.

I think that the legislation that is now pending before you is really a major, major step in both Native American relations and in museum practices. I commend you very much for it.

Thank you very much.

[Prepared statement of Mr. Bender appears in appendix.]

The CHAIRMAN. Mr. Bender, we thank you for your statement and for the contributions you have made in preparing us to enter into this new era. I look forward to that, sir.

I would like to call upon President Boyd before we prceed with questions.

President Boyd.

STATEMENT OF WILLARD BOYD, PRESIDENT, FIELD MUSEUM OF NATURAL HISTORY, CHICAGO, IL

Mr. BOYD. Mr. Chairman, Mr. Vice Chairman, members of the committee, I greatly appreciate this opportunity of speaking before you. I am particularly grateful to the Vice Chairman and the Chairman for your great efforts to bring about a cooperative approach to joint Native American/museum concerns about cultural heritage.

Basically, I am very sympathetic to what you are doing. Obviously, I am very sympathetic to the panel. Where I do depart from my colleague—I, too, am a former professor of law—is that I think Paul overstates what museums have done to damage our country. I think that while there are certainly examples that should never have happened, on the other hand, we have these great collections because of the concern and respect that people have had for each other's culture.

Let me say that I found the dialog very important and very helpful. I have tried to act on that dialog.

The first part of the dialog sets forth various kinds of descriptions of the role and responsibility of museums' sharing of information. I have made some substantial efforts—not enough, but I am going to continue. We had two meetings in Chicago last week and one yesterday of some 200 museums to underscore that the AAM must proceed to take steps of an affirmative nature to implement and articulate the kinds of standards, the kinds of policies, that were called for in the dialog. I think that is important.

Second, I believe strongly that there has to be an impartial process; that there has to be alternative dispute resolution where there are differences among the parties. Even as you cooperate—and I think it is important to always be working together—nevertheless, you can still have differences of opinion on any given issue. I think there has to be an impartial process.

Where I do depart from the majority of the panel is on the question of legal standards. I believe that all legal standards should be applicable, including the Native American customary law and also the important standards that apply to museum stewardship such as fiduciary duties and the like.

Because I believe in affirmative steps and because I believe in the impartial process and because I believe in the totality of the legal standards—during the process of the dialog, we have developed a process at the Field Museum which basically starts out with the notion that one is looking at groups with cultural affinity, not necessarily just tribes, but groups with cultural affinity.

We are looking at human remains. Where a group with cultural affinity requests human remains for reconsecration, we will transmit them to that group without any question whatsoever.

We are also concerned with sacred objects needed for the practice of religion where we would proceed on a case by case decision basis. Should we not be able to reach agreement on this subject, we would be prepared under the law of Illinois, the State arbitration statute, to submit this to an impartial tribunal with the right to judicial review, which would be necessary and which we also feel would be essential to confirm the transfer of title. protecting ourselves, because on the one hand, while you could cut off the Federal funds, we still do have the problem of the de-accession which we feel we could handle by judicial approval of the action of the arbitrator.

Our process is open—all information we have is available: the collections are available to Native Americans. There would be the impartial tribunal and there would be the adjudication.

Basically, what I think our policy is designed to do is to strengthen cooperation, build cooperation, and make both parties feel that this is something that is in the mutual best interest of all for the general public. I believe in open communication. I believe in conciliation. I believe in impartial dispute resolution. I also believe that all museums should follow suit. That was basically what those discussions were in Chicago last week at the Association of American Museums meeting.

Where there is not a local museum policy, then I think there needs to be State and/or Federal legislation, but I think that Federal or State legislation should embrace these three elements of encouraging communication, conciliation, and impartial resolution.

Now, I have not had a chance to analyze S. 1980 and you want us to be brief, so I will only make a few comments. I would like to see the legislation strongly imbued with the notion of conciliation. You and Senator McCain have both talked about the great importance of both cultural preservation and the responsibility to Native Americans, and also the role that museums play in our society.

The impartial tribunal, which I think should be impartial, which means that it needs to be looked at so that there are no procedural due process problems. Also, the savings clauses cover a multitude of very basic, fundamental Constitutional issues that need to be addressed.

Finally, with respect to the objects covered, most surely I believe that human remains should be covered. Most surely do I believe that associated grave objects should be covered, and most surely do I believe that some very major significant objects should be covered. But as now defined, I believe that the term cultural patrimony has a different meaning than we are used to in the museum field and begins to blur into a great number of other objects.

Let me say that I would like to conclude by simply reiterating and reinforcing a very powerful statement made by Walter Echo-Hawk in 1986 when he said, "Since their inception, museums in the United States have had a relationship with Native Americans that has been both beneficial and antagonistic. Museums played a vital role in the preservation of Native American culture during crisis periods in which the Federal Government actively sought to assimilate the Indian into the mainstream of American Society. Today, these collections provide a means for all Americans to better understand, appreciate, and respect past and present-day Indians. Museums have played and continue to play a role as a bridge between cultures." And Mr. Echo-Hawk correctly concludes that, "The relationship between museums and Indians has not always lived up to its fullest potential."

I believe that it is essential that we take this opportunity to assure that the relationship between museums and Native Americans will live up to its fullest potential. Furthermore, I do not think that we should view this debate as only one between Native Americans on the one hand and insensitive, faceless museums on the other. What is involved here is the enlightenment and understanding of millions of Americans who come each year to museums to be educated and to learn about each other. Indeed, the Native American collections in the museums provide the means of teaching today's citizens about our Native American past in ways that benefit everybody.

I know that you will all bear these various points in mind as you weigh the issues involved, but let me assure you that I found the dialog very positive. It has affected the way we are all acting. We have had a long relationship, as Walter suggested—sometimes love, sometimes hate—but we have been together a long time and I see great possibilities down the line.

Thank you all.

[Prepared statement of Mr. Boyd appears in appendix.]

The CHAIRMAN. I thank both of you very much because we are now entering into an area that has painful reminders and high emotions involved. It is a problem that requires great sensitivity in its resolution.

That is the reason this select committee did not rush to a resolution or judgment. We realize that what is involved is very complicated.

I noted that Mr. Bender, in his statement, suggested that there is no one solution—it is not just repatriation. I must say that my unscientific study seems to bear this out as highlighted by Mr. Echo-Hawk.

In my meetings with tribal leaders throughout this land during the past 2 or 3 years, many have suggested that, "We don't seek a return of these goods, but we would want our sacred objects to be treated with respect. No. 2, we notice that many of these objects are never displayed."

In the Heye Collection there are over a million items and it would be physically impossible to display all of them in a century's time. We would be lucky if we could display 10 percent during the next century, so we are going to have 900,000 items hidden away in boxes and such. They said, "Can't we even borrow them?"

Third, if title can be somehow determined, they would like to have that noted on the collection if it is going to be displayed, that this belongs to the Shoshone; this belongs to the Chippewa, and the Chippewa out of their good graces are permitting you to display this. These are not major obstacles and I am certain that the Native American Indian community is ready to sit down, as Mr. Bender has suggested.

Somewhere along the line, we have not been able to communicate. I hope that this measure will bring about this communication and dialog which I think is so necessary. As our first witness testified, although we may have one policy in the Department of Interior, they have had two practices.

The white soldier gets buried with honors. God knows what happens to the Indian collection. It came about in some cases by sheer robbing of graves. We now have an opportunity to undo this and rectify it, so I look forward to the work that you two are doing.

As far as the technical matter of legal title, I suppose that as a lawyer I would say that we should abide by what the courts have declared to be legal and, maybe in the process, work out a set of rules and legal precedent that would apply to this type of activity. I concur with you that there is much work ahead of us, but that will not deter us from acting.

Mr. BOYD. It certainly will not deter us. It is indeed a great opportunity.

I do want to say that having come as a lawyer relatively recently to the museum field, I feel it a privilege to be able to work in a time when there is great opportunity for people coming together with understanding. What I am urging is that we do not do this in my typical lawyer way, an adversarial fashion.

I do underscore this conciliation. I think it is important to have these advisory committees as many museums do. I think it is important to involve, as Mr. Echo-Hawk pointed out when he met me, that Field Museum had the Pawnee working and involved in the making of the Pawnee earth lodge in the museum.

There is much to be done. This is a great opportunity and we look forward in the museum world to working with this committee very much.

The CHAIRMAN. In discussing this matter with anthropologists, scientists, and museum directors, they seem to be very fearful that you will have an onslaught, an avalanche of demands—

Mr. BOYD. But that is no reason not to do it. This is an important issue for us to be addressing and I believe very strongly that it must go to the basic relationship.

Senator MCCAIN. Mr. Boyd, please don't interrupt the Chairman.

Mr. BOYD. I'm sorry.

The CHAIRMAN. I can assure you that if that onslaught or avalanche was going to happen, it would have happened a long time ago. For all of these years, the Indian community has made very few demands and I do not see why this new law would add a new impetus to all of this.

I think that what the Indian community is seeking is very simple. They want to be treated like people—as you said, like all other people.

When I have addressed this matter to other groups, I have said, "How would you feel if we had a collection of just Irish skulls or Chinese skulls or Japanese skulls or German or Dutch skulls? There would be an uproar in the United States.

We have not had an uproar because we maintain collections of Indian skulls. I think this sad chapter should be closed.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Boyd, did you want to say anything else?

Mr. BOYD. I apologize for having interrupted.

Senator MCCAIN. Mr. Bender, did you?

Mr. **Bender**. I wanted to make a couple of remarks.

I agree completely that conciliation and negotiation and discussion are really important. But there has to be some rule in the background of that process, and I disagree with the idea that you should have arbitration without any fixed standard, without any legal standard—and that you have judicial review of that arbitration, again, apparently without any legal standard.

The only way to resolve these issues is to have a standard, and I think that it has to be an overriding Federal standard. As I said before, I think that standard needs to be tribal control.

I think, Mr. Chairman, that the problem with the predictions of an avalanche—I agree with you completely that there will not be an avalanche—is that the people predicting that have not been talking to the Native American community. They fear the unknown.

If they talk and discuss, they will find that the Native American community is just as interested as they are, I think, in science and in what can be learned from these materials and what can then be taught about Native American cultures. There is no need for the museums to treat the Native American community as a potential antagonist. They are people who will cooperate in all of the museums' enterprises. So, as you, I do not fear any kind of avalanche of requests.

Senator **McCain**. I want to thank both of you for providing us with very important testimony. Paul, I would also like to thank you again for the yeoman-like work you have done on this issue.

Mr. Boyd, how many human remains and Native American objects are in the possession of the Field Museum, roughly?

Mr. **Boyd**. We have approximately 1,200 human remains of Native Americans in the Field Museum. We have roughly 100,000 ethnographic materials from about 100 groups in the country, and we have about 135,000 archeological objects from nearly every State in the Union. Most of those are largely in the field of remnants of pottery and things of that nature.

Senator **McCain**. And how many remains or objects have been repatriated under the museum's policy to date?

Mr. **Boyd**. The policy went into force this summer. We are now in the process of repatriating two of the first requests we have had.

Senator **McCain**. But up to this time, there have not been any repatriations?

Mr. **Boyd**. That is correct. Well, there have been earlier repatriations prior to my time, but this is the first one I have had experience with.

Senator **McCain**. You don't know the numbers prior to your coming on?

Mr. **Boyd**. I apologize, but I don't.

Senator **McCain**. Maybe you could supply that for the record if you have an opportunity.

Mr. **Boyd**. Sure. Basically, I think that this is the right way for us to go.

[Material supplied appears in Mr. Boyd's prepared statement in appendix.]

Senator **McCain**. Mr. Bender, in your view, how would this legislation impact current efforts in various State legislatures, for example, Arizona, to address the issue?

Mr. **Bender**. I think it would facilitate those efforts. I think there is a place for both Federal and State legislation. I think the passage of this legislation will accelerate the trend in the States to take this kind of legislation seriously and to work out procedures on the local level for dealing with things in their State museums. They would need to be consistent with the Federal legislation but I think there can be specific procedures to deal with a local problem depending on where things are and what the relationships are in the community.

I think this will help—it already has helped. The fact that the legislation is pending has really helped a lot in the process of moving this legislation through the Arizona Legislature.

Senator **McCain**. Briefly, Mr. Boyd—I agree with your statements concerning the excellent contributions that museums have made in the area of preserving Native American culture, objects, and artifacts, particularly during a time when forced assimilation or termination policy was the Nation's policy. I do have to tell you though that there is another side to that coin. It was exemplified by what the Chairman saw at the Smithsonian some time ago, which frankly was one of the triggering mechanisms here—thousands of remains sitting in boxes or lying around unattended for years and years and years.

In all candor and in all deep respect for museums across America, including the Smithsonian, I have to say that those remains were not treated the way other remains would be treated. It's a fact. So at the same time as I agree with your plaudits that you justifiably extend to museums, I also have to say in all candor that the record is indeed checkered as far as the kind of respect that was accorded to these artifacts while they were entrusted to museums.

I also have to get back to the basic question: How much does the keeping of human remains contribute to the preservation of Native American culture? Artifacts, drawings, and all kinds of things can contribute to Americans' treasuring and preserving Native American cultures. I am not clear as to why this emphasis is on keeping human remains as a way of preserving Native American culture. Perhaps that is a question for another day.

Again, I appreciate very much your contributions. I am appreciative of the new policy that is being implemented by the Field Museum, and Professor Bender, we are always grateful for your presence and your contributions.

Thank you, Mr. Chairman.

The **Chairman**. Senator Conrad.

Senator **Conrad**. Mr. Chairman, I have no questions but would like to make several observations.

One is that the report that all of you did under the sponsorship of the Heard Museum is really quite exceptional. Obviously, an extraordinary effort went into that and we appreciate that.

The other observation I have, Mr. Chairman, is that this almost strikes me as a lesson in etiquette, in manners, about how people treat each other. If you read this report, it is almost a rule book on how you treat others with respect. I think it is very useful and I want to thank all of those who participated in this effort.

Mr. BENDER. Thank you very much.

The CHAIRMAN. Gentlemen, I thank you very much.

Our next panel is a Native American panel consisting of the Governor of the Gila River Indian Community of Sacaton, AZ, Thomas R. White. He will be accompanied by Cecil Antone, Director, Land Use Planning Commission. Speaking on behalf of the National Congress of American Indians will be Edward Lone Fight, and speaking for the Native American Rights Fund of Boulder, CO, we have Walter Echo-Hawk. We also have the executive director of the American Indian Science and Engineering Society of Boulder, CO, Norbert Hill.

Governor White.

STATEMENT THOMAS R. WHITE, GOVERNOR, GILA RIVER INDIAN COMMUNITY, SACATON, AZ, ACCOMPANIED BY CECIL ANTONE, DIRECTOR, PHYSICAL RESOURCES DEPARTMENT

Governor White. Thank you, Senator Inouye, Senator Conrad, staff of the Select Committee on Indian Affairs, and fellow tribal leaders. I want to first express my appreciation for being provided this opportunity to testify today on behalf of the Gila River Indian Community.

This legislation, S. 1980, should have been enacted a century ago. These provisions will go along way toward correcting the unfortunate situation that has been allowed to develop for over 200 years and will enable Indian tribes to redress past wrongs and deal with current problems.

The Community is particulary affected by the taking of human remains, funerary and sacred objects, and other objects of cultural and religious significance. Our proximity to the metropolitan area makes it relatively easy for individuals to desecrate burial areas and steel sacred objects from sites within the Gila River Indian Reservation.

The Community supports enactment of the criminal penalties set forth in Section 4 regarding ownership. The prohibition of the transfer for sale and profit remains or sacred objects from one State to another State or from the United States to any other country is both reasonable and proper and upholds the dignity of Native Americans.

On March 21, 1990, the Gila River Indian Community approved the attached resolutions which reflect three basic principles that Indian tribes have been trying to get recognized and implemented for the past 200 years. These principles are repatriation, reburial, and grave protection legislation.

The Gila River Indian Community along with the Ak-Chin Indian Community, the Salt River Pima-Maricopa Indian Community and the Tohono O'odham Indian Nation have pursued enactment of this legislation to promote recognition and implementation of the above-mentioned principles. A policy statement reflecting these views is attached.

These four tribes are especially and adversely affected because we are all descendants of the Hohokam. The problem we all contend with is that artifacts and remains of the Hohokam are on display in museums or are stored in depositories throughout the United States. With the enactment of this bill, we can vindicate the memory of our ancestors and honor their remains by repatriation and reburial.

The State of Arizona enacted legislation closely resembling S. 1980 but will not provide the return of Indian remains to tribes from other States. The bill, S. 1980, will give all Indian tribes the power to request their ancestors' remains from other States.

We also strongly support the concept and the rationale of the term "Native American Sacred Objects." It is both enforceable and significantly precise, and we oppose any attempt to weaken or dilute the substance of this term.

My report is two-fold with mine being provided by the Gila River Indian Community and with that of Cecil Antone being provided by the Inter Tribal Council of Arizona.

The CHAIRMAN. Mr. Antone.

Mr. ANTONE. Thank you, Senator.

First of all, the Inter Tribal Council of Arizona is recognized by the 19 tribes that are organized to deal with issues in Arizona. The ITCA developed a committee in 1982 called the Culture Resource Working Group and by the act of that committee, we looked at issues reflecting Indian concerns, particularly culture resources investigations and reburial, repatriation, and grave protection.

More recently, the Inter Tribal Council supported S. 1980, through a resolution included in your packet. We are in full support of this legislation, but have a few concerns.

One of the concerns that we have in this legislation is the review committee. We would request that the review committee be selected by the Senate Select Committee on Indian Affairs in that endeavor as opposed to the Secretary of the Interior making that determination. We would like to see that changed.

The other issues are in regard to legal title, which has already been addressed. That still needs to be interpreted.

As far as the legislation in general, we support it wholeheartedly. The Inter Tribal Council of Arizona is there to offer any assistance as need be.

The CHAIRMAN. Thank you very much. Before I call on our next witness, I went to recognize Senator Conrad.

Senator CONRAD. Thank you, Mr. Chairman. I would like to just briefly introduce our next witness, Ed Lone Fight, the chairman of the Three Affiliated Tribes in North Dakota.

He is one of the most respected tribal leaders in my State and someone for whom I have great respect. He is here in his role of representing the National Congress of American Indians.

I wanted to welcome him to our committee today and to express to the other Members what an outstanding leader he is.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Lone Fight.

STATEMENT OF EDWARD LONE FIGHT, ON BEHALF OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Mr. Lone Fight. [Remarks given in native tongue.] That is the name that we bestowed upon Senator Inouye when he visited the Fort Berthold Indian Reservation of the Three Affiliated Tribes which are the Mandan, Hidatsa, and the Arikara Tribes. In a very sacred ceremony, one of our medicine men bestowed that name. It means the "One who helps people."

I appreciate the introduction by our Senator from North Dakota, Senator Kent Conrad. Senator Conrad and the rest of the delegation have provided the good leadership in North Dakota for many things to happen, not only for non-Indians but also the Indian members of the State of North Dakota.

I might add that in the State of North Dakota, because of leadership demonstrated by Senator Conrad, Senator Burdick, Congressman Dorgan, and also the Governor of North Dakota, we have led the Nation as one of the leaders of tribes in the effort for reinterment ancestral remains including associate grave goods for reburial. When I came to office we had over 200 boxes in the basement of the North Dakota Historical Society, boxes of our ancestral remains and associated grave goods.

We said that this is not what we want—and the time is now to do something about it. It has taken us three years, but with the cooperation of the Congressional delegation and the legislative bodies in the State of North Dakota and the Governor, just about 2 weeks ago, we accomplished that feat. All of our ancestral remains and associated grave goods have been reinterred, not by anthropologists and archaeologists, but by the Inter Tribal Reinterment committee.

I thank the committee for allowing me the opportunity to provide testimony on behalf of the National Congress of American Indians. I am also providing testimony on behalf of the Indian tribes in the State of North Dakota, the Standing Rock Sioux Tribe, the Devil's Lake Sioux Tribe, the Turtle Mountain Band of Chippewa Indians, and also the Three Affiliated Tribes which consist of the Mandan, Hidatsa, and Arikara Tribes.

We applaud the efforts of Senators Inouye and McCain and also Senator Conrad for taking this stand, providing legislation so that we may once and for all put the shameful history of the United States to rest. That is the reburial of all of our ancestors and their associated grave goods.

We believe that this is the way to go. We believe in the intent of the act.

I will not read my prepared statement. I have a prepared statement from the National Congress of American Indians which I would like to include for the record and also the statement from myself as the Chairman on behalf of all the tribes in the State of North Dakota. We also have resolutions and other statements from different native groups which we would like included in the record.

I understand that the record will be open for a couple of weeks, to include additional statements. We did not have ample time to provide a comprehensive statement. We just got the information about 4 days ago and we are still working on that.

There are some problems that we see in this bill. Number one: we in NCAI and the people I have mentioned do not want any further study of the bones. There is no mention of study in this proposed bill. It says, "Inventory," but I think that could be misconstrued as study. We do not want any further study.

They have these bones in boxes that remained in these places for a number of years. Federal agencies and other entities and museums have had anthropologists and archaeologists on their staff. By now, they should have done what they need to do and completed their tasks, so we do not want any more study or analysis.

What they do in analysis—I don't know if any of you know here—but they will take the bones and burn them to a crisp. We don't want this. Then they study with carbon and the other chemicals that go along with it. We do not want that to happen anymore to our ancestors.

Also, you talk about 5 years to inventory the bones. I think it should be 2 years. They talk about another chance to extend that period. If it is extended at all, I think it should be 90 days. They have had 200 years or so to do this and they haven't done it yet. We don't want this study because this is based on human rights and also, there is no new data that will be derived from analyzing our ancestors' bones.

I would be glad to have a chance to provide input on this bill. I think that in 1906 Congress passed the Antiquities Act and there was no tribal input on that bill. It was purely archaeologists, anthropologists, and museums. The other one, passed in 1978, was the Archeological Resource Protection Act which also had very limited Indian input. I am glad that as a tribal chairman I am having a chance to provide some input.

As part of NCAI let me say that we stand ready to assist the committee in any and all endeavors to provide further testimony and further work so that we have a bill that is supported by all Indian tribes in the United States. We also feel that the Review Committee should not have any anthropologists or archaeologists on it. These should be Indian people who are associated with the reinterment issue. In the State of North Dakota we have a reinterment committee. There are no archaeologists or anthropologists on that committee. They are people who deal with the reburial issues.

We don't need anthropologists on this Review Committee. We want them to rebury the bones and the associated grave goods.

Senator Inouye, that concludes my remarks. I will provide those written testimoneys for the record. Thank you very much.

[Prepared statement of Mr. Lone Fight appears in appendix.]

The Chairman. Thank you, sir.

May I now call on Mr. Walter Echo-Hawk?

STATEMENT OF WALTER ECHO-HAWK, ESQUIRE, ATTORNEY, NATIVE AMERICAN RIGHT FUND, BOULDER, CO

Mr. Echo-Hawk. Good afternoon, Mr. Chairman and members of the Select Committee on Indian Affairs. I am Walter Echo-Hawk, a staff attorney for the Native American Rights Fund. I want to thank you, sir, for the opportunity allowing NARF to participate in this important hearing this afternoon.

I am pleased to offer testimony on behalf of the Native American Rights Fund in support of the proposed substitute bill for S. 1980 and S. 1021, which I understand will be the focus for this hearing. Friday, I filed 30 copies of my written testimony in the offices of the select committee. That written testimony covers three areas for the consideration of the committee.

First, it summarizes the need for legislation to protect Indian graves and to repatriate Native American human remains, funerary objects, sacred objects, and certain kinds of cultural patrimony. Second, my testimony reviews all of the ample legal authority of Congress to enact legislation such as the proposed substitute bill which is a legally sound piece of legislation. Third, my testimony demonstrates that the proposed substitute bill will not impair any museum fiduciary obligations nor impair any legal interest of any other third party. My oral statement this afternoon will merely summarize that written testimony.

First, I would like to say that NARF is generally in support of the proposed substitute bill. We do have some technical comments concerning bill language that appear at the end of my written testimony and we do stand ready to assist committee staff and any other interested parties in any needed refinements on this legislation, legal research, or anything else that we can do to make this a workable piece of legislation.

This bill combines the very best, I feel, of S. 1980 with the very best of S. 1021. It also takes into account the important and well thought out recommendations of the report on the national dialog that we heard about earlier. Finally, the bill also takes into account the precedent that Congress established last year with the passage of the Museum of the American Indian Act.

Mr. Chairman, in my opinion, this substitute bill may well be the most important civil rights legislation and human rights legislation for Native people since the passage of the American Indian Religious Freedom Act in 1978. The purposes of the bill are straightforward. It does three basic things.

First, it grants needed legal protections for Indian graves. Second, it allows Indians and Native people to bury their dead under specified repatriation guidelines and procedures. Third, it restores stolen or improperly acquired property to the rightful Native owners upon request.

These are basic human rights, Mr. Chairman, and property rights which most Americans commonly take for granted. Sadly, this has never been the case for Native people.

The hundreds of thousands of dead Native Americans that have been dug up from their graves and now lie in the Nation's museums, universities, government agencies, and tourist attractions provide mute testimony that the laws in all 50 States and the District of Columbia which so strongly protect the sanctity of the dead for other citizens and guarantee a decent burial for all citizens have never been extended to include Native Americans. Remedial legislation in the nature of the substitute bill is therefore needed to allow tribes to rebury these dead.

Existing Federal law, has inadvertently contributed to this problem. The Antiquities Act of 1906, for example, defines dead Indians that have been interred on public lands as archeological resources and converts these persons into Federal property. Under that act, humans can be dug up under Federal permits and such excavations according to the act, "Must be made for the permanent preservation in public museums."

Significantly, the Secretary of the Interior has recently announced that a new policy will be developed to repatriate some of these dead, and NARF highly commends the Secretary for that new change in policy. I have the highest personal regard for the Park Service officials, including Mr. Rogers who testified earlier who will be developing that new policy. I hope to work closely with them in that regard. However, in my opinion, the present wording of the Antiquities Act and the subsequent Archeological Resources Protection Act which require these remains to be permanently preserved in a public museum must be amended in order to clarify the legal authority for the Secretary's new proposed policy.

Today, as we all know, Federal land managers and Indian tribes are beset with illicit grave looting and interstate trafficking of booty from Indian graves. Contemporary examples of these kinds of problems abound. Even today as we speak, ranchers in certain Southwestern States let people dig up Indian graves on their lands for profit. Hundreds of Native dead are on public display in museums and tourist attractions.

It was 2 weeks ago, after the Colorado Legislature enacted an unmarked grave protection act, an anonymous opponent of that measure mailed the sponsor of the law a box containing the skeletal remains of an American Indian with an unsigned note stating that these were Anasazi dirt bones.

In short, there is a need for this legislation. Native American communities today, unfortunately, are no strangers to the horror and to the indecent outrage that was reported over the weekend in the "Washington Post" that was caused by the desecration of Jewish cemeteries in France and in Israel.

After a 1-year dialog, the panel report mentioned earlier recommended that Federal legislation is in fact needed, and NARF agrees with that recommendation. When fundamental human rights are at stake, Congress has never hesitated in the past to enact laws to protect Constitutional rights. Policies, Mr. Chairman, are no substitute for laws when it comes to these matters.

Protective legislation is even more appropriate in this instance in order to carry out Federal trust responsibilities for Indian tribes and dependant Native communities. Congress has never ceded its guardianship over the tribes to non-governmental entities when tribal property rights are at issue or when tribal sovereignty over domestic affairs is threatened. Therefore, protective legislation to accomplish the purposes of the substitute bill is necessary and proper.

There is ample constitutional legal authority for Congress to enact this bill. Congress has broad plenary authority to carry out its trust obligations in the manner under the Commerce Clause, the Treaty Clause, the Property Clause, the Indian Commerce Clause, and the Supremacy Clause. These sources fully empower the instant legislation.

Moreover, Congress has equally strong constitutional authority to legislate to protect basic human rights such as those implicated under the 1st amendment and the 14th amendment in this matter. Those prior civil rights laws have already been upheld by the courts in other legislation. Finally, Congress may regulate or prohibit illicit or interstate or international trafficking in dead bodies and other Native stolen property under the Commerce Clause.

I think it is important to note that the substitute bill does not legally impair any legal rights or responsibilities of non-Federal museums or other persons. The ownership provisions of section 4 do nothing more than codify longstanding principles of American common law concerning the disposition of the dead and funerary objects as well as American property law.

Similarly, the repatriation provisions of section 5 merely codify the very same legal principles. It is fundamental that if non-Federal museums can not establish their title to property that has been stolen or improperly acquired, then the property should be returned to the rightful owner upon request. Compliance with these rules of law in order to receive Federal funding is an entirely reasonable public policy.

Mr. Chairman, this concludes my oral testimony and I would like to say that NARF supports the substitute bill and we stand ready to work with committee staff on technical language such as that appended to our testimony. We are available for further legal memoranda.

I would like to respectfully call upon all interested parties to work together at this point to solve this social problem in a constructive fashion and to resolve any implementation details of the substitute bill. It seems clear to me that society's debate over whether these dead are entitled to be reburied or whether Indian tribes are entitled to recover their property is over, and that the focus now is on implementation details.

Thank you, sir.

[Prepared statement of Mr. Echo-Hawk appears in appendix.]

The CHAIRMAN. Thank you, Mr. Echo-Hawk, and thank you for all the assistance you have given this committee over the years.

Our next witness is Mr. Norbert Hill.

STATEMENT OF NORBERT HILL, EXECUTIVE DIRECTOR, AMERICAN INDIAN SCIENCE AND ENGINEERING SOCIETY, BOULDER, CO

Mr. HILL. Good afternoon, Mr. Chairman and members of the committee. I am Norbert Hill, Jr., member of the Oneida Nation and executive director of the American Indian Science and Engineering Society.

AISES is a private nonprofit organization which seeks to significantly increase the number of American Indian scientists and engineers in the Nation and to develop technologically informed leaders within the Indian community. The ultimate goal of AISES is to be a catalyst for the advancement of American Indians as we seek to become self-reliant and self-determined members of society. Our challenge is to reconcile western science with American Indian tradition and culture.

Therefore, I appreciate the opportunity for AISES to participate as a witness in this important hearing. I am pleased to offer testimony on behalf of AISES on the Native American Repatriation and Cultural Patrimony Act, the Native American Grave and Burial Protection Act, and the draft proposed substitute bill, which I understand will be the focus of this hearing. AISES is in support of this legislation which is morally correct.

My testimony will focus on the ethics of science. Attached to my testimony, I have appended the AISES position paper which was adopted unanimously by our board of trustees. The people must come first. They must come before science and come before the museums and they must come before the anthropologists and archaeologists.

In Russell Thorton's book, "The American Indian Holocaust," he says that in 1492 there were between 5 and 6 million Indians in the 48 contiguous States. Just 100 years ago, there were 195,000 survivors. This American Indian holocaust has never been reconciled by the U.S. Government.

Recently, the East Germans apologized to the Jewish community for their behavior in World War II. As we approach the 500-year anniversary of Indians discovering Columbus, Indian people have not yet received any sort of apology for the destruction of our societies and the desecration of our graves. This bill is part of the reconciliation necessary to heal the wounds of Indian people.

The people must come first—and we, the people, the original inhabitants of this great land, are asking for nothing more than legal and religious sovereignty in the treatment of and determination of our ancestors' remains and grave offerings. No longer can our ancestors be called specimens, pathological materials, data, and archeological resources. The time is now to rectify the profound injustices of the past century that have taken place in this country in the treatment of Indian graves, human remains, and funerary offerings.

They have often been handled in a manner inconsistent with the treatment accorded with other burials in the United States, and it is wrong for the remains of Indian ancestors and funerary objects to be displayed publicly or closeted for undetermined research. Respect for the dead is paramount in our culture as it is in all cultures.

As a national organization which supports Indian involvement in the sciences, AISES feels that it is important to register our views concerning the scientific investigation if Indian skeletal remains, mortuary offerings, and grave sites. The reburial and repatriation issues are simple questions of humanity and morality—of reconciling western scientific ideology and Indian spirituality, and of religious freedom.

Based on this, AISES feels that the dead of all races and nations are entitled to protection from arbitrary disturbances and treatment which is offensive to the rights and sensibilities of living communities. All graves and cemeteries should be regarded with a strong presumption of inviolability. Scientific investigation of the dead should be conditional upon the submission to the wishes of the living community under study or the heirs and descendants of that community. As stated by Mr. Adams, Secretary of the Smithsonian, "It's up to descendants to determine where remains go."

It has been argued by many museums, scholars, and State and Federal agencies that the retention of human remains of American Indians is essential to the progress of science and is of great benefit in educating American people about Indians. Historically in this country, it has been demonstrated that science and religion have been used as a means to dehumanize minority populations. When the Spanish first arrived in this land, it was maintained that human species were naturally divided into two kinds of men: First, the civilized man who was believed to have the intelligence, sentiments, emotions, beliefs and values, and second, the brute or barbarian who lacked these essential qualities and who, by this very nature, would find it difficult if not impossible to acquire them.

In the course of the last five centuries, the so-called scientific community has set out to demonstrate that Indians were savages through vicious and vile methods. In the 1860's, field surgeons, at the request of the Surgeon General certain general, were urged to collect Indian heads for the purpose of assisting the progress of anthropological science. This was carried out over the next several decades in which thousands of heads were obtained from burials and battlefields.

In the 1930's, one of the worst Smithsonian-sanctioned grave robbings took place in a Native Alaskan village on Kodiak Island. The skeletons of more than 800 Koniag people were excavated in a cemetery that was still in use at that time. These remains are still housed at the Smithsonian.

Whatever arguments may be made for the potential benefit of research to Indian tribes, scientists must acknowledge the actual, not potential or theoretical, harm which proceeds from the circumstances of clandestine expropriation of the dead, confiscation of funerary offerings, and the conduct of scientific studies without tribal knowledge or consent. Under such conditions, scientific investigation can hardly be termed objective or ethical no matter what benefits might materialize. Thus, when it comes to science versus moral and ethical issues, there is only one path to follow.

As Marcia Angell, the executive editor of the New England Journal of Medicine recently observed, "The importance of results from scientific research has no place in judging ethics." It seems relevant to note that this statement was made in the context of evaluating the ethics of using Nazi scientific data. The scientific excesses of Nazi Germany should serve as a reminder of what can happen when a society permits the purposes of science to overrule community consent, religious and human rights, and public sensibilities. As on survivor of experiments conducted by Dr. Mengele recently put it, "Science cannot become the master of man."

AISES disagrees with the reasoning which serves to elevate scientific curiosity above human rights, and which is designed to undermine the authority of Indian governments to protect the disposition and treatment of Indian human remains and grave offerings. We recognize that the treatment of the dead by the American academic institutions affects Indian communities throughout the United States.

It is a sad thing that at many universities throughout the country, students have a considerably better chance of learning about Native Americans from skeletal remains than from Indian professors. It is a fact that the remains of Indian dead on many campuses outnumber the living and breathing Indian students.

Stanford University houses 550 human remains; Yale, Harvard, and the University of Oklahoma each reported close to 500. Arizona State and the University of Colorado have approximately 350. The University of Missouri curates some 1,500 Indian remains, which the Director of the Museum of Anthropology defined in 1989 as, "A non-renewable resource essential to research," declaring that he had "No intention of letting them go."

It is difficult for some anthropologists to come to grips with the moral aspect of the repatriation issue. Nevertheless, the American Anthropological Association's code of ethics requires anthropologists to place the best interest of the people studied above their own professional ambitions. For example, their code of ethics states, "In research, an anthropologist's paramount responsibility is to those he studies. When there is a conflict of interest, these individuals must come first."

In no other area has this ethic become so important as it has in the repatriation issue. It is, therefore, regrettable that some of the anthropologists who have long benefitted from Indian people are acting to oppose the return of these dead for reburial.

The historical emphasis of American universities on building and maintaining collections of Indian skeletal remains must shift to the recruiting of living Indian students. The mission of AISES would be materially served if more Indians were brought in to the academic science studies as students rather than as specimens, as well as the development of relations based on mutual respect between Indians and science communities.

It is strongly urged that these very significant bills be passed to demonstrate that equality of all races exists in the United States and that we, as a nation, will be entering the 21st Century with respect, honesty, and integrity as fundamental truths.

The heart of Indian people lives in the spirit of the past, the past that wells within our hearts and reminds us of the heritage when our ancestors lived in tribes and were close to the Earth. As related by Chief Joseph of the Nez Perce in the hour of his father's death in 1871:

> My son, never sell the bones of your father. When I am gone, think of your country. You are the chief of these people; they look to you to guide them. Always remember that your father never sold his country. You must stop your ears whenever you are asked to sign a treaty selling your home. A few years more, and white men will be all around you. They have their eyes on this land. My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother.

I told him I would protect his grave and he smiled and passed away to the spirit-land... A man who would not love his father's grave is worse than a wild animal.

Thank you very much.

[Prepared statement of Mr. Hill appears in appendix.]

The CHAIRMAN. I thank you very much, sir.

Governor White, in your statement you spoke of a relationship that you have maintained with the local museum communities. How many items or remains have been repatriated to your tribe as a result of these meetings you have had with the museum?

Governor White. Mr. Chairman, we started our dialog with the State museums and also with the anthropologists maybe 4 or 5 years ago. Within the Gila River Indian Community itself, we started this dialog maybe 15 years ago when the University of Arizona and their archeological department came through and excavated what is known as I-10, which runs right through the middle of the Gila River Indian Community. Those artifacts and remains have been held at the university for over 19 years.

We still request that they return every item that we feel belongs to our ancestors as they were dug out of the land along the Gila River. Up to this date, we have not seen anything returned.

The Chairman. You have not received anything yet?

Governor White. Not to my knowledge.

The Chairman. What would you like to have returned to you? What sort of objects?

Governor White. When I spoke about the metropolitan areas of Phoenix—I believe—that they have excavated various villages and burial sites that were uncovered throughout the massive freeway systems that they have developed or are developing at this time. We find that these remains are somewhere within the University of Arizona and Arizona State University.

We are trying to make some headway. There is also another portion that comes out of Salt River where there had been talk of returns of up to 350 remains. At this point though, it has all been lip service.

The Chairman. Thank you, Governor.

Mr. Lone Fight, you have had some experience in this area in North Dakota. What sort of objects were repatriated or returned to the Indian tribes as a result of your discussions?

Mr. Lone Fight. Mr. Chairman, there were about 200 big boxes that have everything in them, bones, artifacts. One issue was an arrowhead that went back so many years; that became an issue. Some of the scientific community and anthropologists did not want that reinterred, but we said that we did want it reinterred, so it is now buried in the ground.

That is one example of the kind of thing where the scientific world says, "This adds to the knowledge in this world," and we say that it doesn't. It was buried and was part of the burial ceremonies of a long time ago and it has to be reburied. There were 200 bones or skulls, arms, limbs, different parts of the human body. Some of the other things were beads and also things that have sacred value, spiritual value.

The Chairman. They were all reburied?

Mr. Lone Fight. They were all reburied. It's a successful story. It took a lot of effort and a lot of people were involved in it.

The Chairman. I would like to congratulate you.

Did you have to identify them?

Mr. Lone Fight. There was one group that was not identified and the scientific community tried to hold us to identifying it when they couldn't identify it either. We said that they needed to be reburied. That is when we set up the Inter Tribal Burial Committee and they reinterred them in North Dakota.

I believe there is one set—I am not sure whether this is final or not—the Federal agency said that was their property. Somehow they assume that they have a right to ownership of our ancestral bones. That is very deplorable and very gross. I think that is why they are holding certain boxes right now. Maybe it goes to the Antiquities Act or the Resource Preservation Act, but we are working on that and hopefully the gentleman that provided the testimony earlier would see fit to give those back to us.

We did get 300 boxes from the Army Corps of Engineers from when they flooded our reservation. We lost 156,000 acres of prime bottom land. As a result of that, in 1947, they confiscated 300 boxes of bones. They were stored at the Omaha District and they had lent them out to the University of North Dakota and South Dakota State University, but we got those back also.

The CHAIRMAN. Thank you.

Mr. Echo-Hawk, as we proceeded in the evolution of this bill, one question popped up quite constantly. That was: is it appropriate for the Congress of the United States to define the word "sacred?" Put another way, how would you define "sacred?" We have the words sacred objects.

Do you think it is appropriate for the Congress to place a definition on the word sacred?

Mr. ECHO-HAWK. I think it is very difficult. I have heard that comment, too, in my various travels, that some of the traditional religious leaders and practitioners have a great concern about anyone defining the sacred aspects of their religion. However, it does seem to me that because these same practitioners are also requesting the return in limited instance of sacred property that, somehow, we do have to grapple with some kind of definition.

All I can say, Senator, is that hopefully that will be done in a real sensitive manner in consultation with the representatives of these religious leaders, that they might be satisfied that it is done only for purposes of the particular statute, to carry out their own desires and wishes and not for purposes of defining what is sacred to them.

The CHAIRMAN. Another matter of concern to museums has been the definition of property rights. Many have claimed that they have rights to this property—property which has been with the museum for many decades. What is your view of the assertion that this law would, in essence, result in an ex post facto law that would redefine their property rights. What would your comment be to that?

Mr. ECHO-HAWK. I would respectfully disagree with those concerns. I think they are concerns that need to be raised and looked at, but I think that if you do look at it, you will find that there is no legal basis for those concerns because the property that is the subject matter of this particular legislation is human remains, which is not property under the eyes of the common law. They are not something that one buys or sells or trades or taxes.

Second, funerary objects—under the common law, they can be property, but they are property that belongs under the common law to the person that furnished the grave to begin with or that person's descendants. Therefore, if you return it, as envisioned under the present statute, to them, then you are not interfering with anybody else's property right.

The same is true with regard to the cultural patrimony which is very narrowly defined in the statute to that rare category of Native property that is inalienable by definition. Therefore, you are not interfering with anyone else's property right as well.

I think that the concerns are largely misplaced and I would be more than happy to further brief this issue or discuss it with some of the persons who are concerned about it. I feel like it does not subject the museums to any liability to any third party; there are not any fiduciary obligations that any court would enforce that would require a museum to retain stolen property. These concerns need to be looked at, but they are not dispositive and should not forestall moving forward.

The CHAIRMAN. In one of my discussions, the museum official brought up the matter of Egyptian mummies. They are human remains. He said, "We are not required to return them," and in all likelihood, they were also stolen.

Mr. ECHO-HAWK. I would presume, sir, that those who are in possession of Egyptian mummies have the lawful consent of the Egyptian people and government to retain them. That is fine. If Egypt or Europe or any other culture, under certain circumstances, determines that it is okay to dig up their dead, well, that's fine and we can respect that. But here in the United States, Native cultures have different viewpoints.

You have a situation here where you have one culture or society digging up the dead and retaining those remains against the wishes of the minority culture. So the parallel or analogy to the Egyptian dead is not really an appropriate analogy in this instance.

I think that all that is being done here is to inject that same legal consent that presumably they would have had to have gotten to retain the Egyptian mummies—to do the same for Indian remains. If they don't legally own those Egyptian mummies or don't have the consent, then I have little sympathy for that concern.

The CHAIRMAN. Will this bill cover the following situation, which has been described to me by one of the witnesses here? I own a large tract of land. I have grazing on this land at the present time. On this land, we recently found a burial site. Who owns the artifacts in that burial site?

Mr. ECHO-HAWK. Under the common law there is a legal fiction and a myth that the landowner owns everything embedded in the land. On further examination, that is simply a myth because there is an exception to that rule whereby a landowner does not in fact own dead bodies or funerary objects embedded in his soil. He has technical possession of them, but only in trust for the descendants of those materials.

As this legislation is presently drafted, would make it unlawful to sell those kinds of materials on an interstate basis. Congress does have the authority to do that. It would not interfere with or impair any rights of any property owners.

I feel that it is necessary to go to the market place to cut off the black market that is the motive for the grave robbing that really has shocked the Nation's conscience on several occasions in recent years.

The CHAIRMAN. It covers interstate sale of these objects?

Mr. ECHO-HAWK. It would also cover the international export of these same materials. I am not sure—I would have to go back and look at it—whether the act is intended to apply strictly to private lands or only to Federal lands in so far as the need to get Native consent to disturb these materials.

The CHAIRMAN. So if the farmer finds something on his property and he sells it to his neighbor, the transaction will not be covered?

Mr. ECHO-HAWK. I think that the law would only apply to interstate sale and to export.

The CHAIRMAN. We will continue working with you, Mr. Echo-Hawk because many of these questions will have to be resolved somehow.

Mr. ECHO-HAWK. I would be honored to provide any assistance I can. I would also add that Federal statutes already prohibit a lot—Title 18 of U.S. Code 1163 already makes it illegal for anyone to steal or to possess stolen property belonging to any tribal organization. So I don't feel like this legislation goes that much further. It only directs it to the instant problem that we are concerned with.

The CHAIRMAN. It would be extremely helpful to this committee if the Indian community, the National Congress, also, would advise us and share with us your wisdom on how we should define sacred.

Mr. LONE FIGHT. We will be honored to do that, Senator.

The CHAIRMAN. Mr. Hill, you spoke of other collections and human remains. Do you have any national number of how many remains are presently held in collections?

Mr. HILL. No; I do not, sir. Thousands upon thousands, but I can not give you a hard number with all the universities and museums that exist.

The CHAIRMAN. You had some numbers, did you not?

Mr. HILL. Yes; I did.

The CHAIRMAN. Would you repeat those?

Mr. HILL. Surely. Stanford, 550; Yale, Harvard, and the University of Oklahoma, close to 500; Arizona State and the University of Colorado, approximately 350 each; and the University of Missouri had 1,500 remains in their museum. Those are only a selected few that we sampled.

The CHAIRMAN. It is obvious that there are more skeletal remains in these museums than you find in the largest cemetery in the United States.

Mr. HILL. That is absolutely true, Senator. There are more Indian skeletal remains than there are live Indian students on campuses. One could say that they are waiting for the financial aid.

The CHAIRMAN. I thank you, gentlemen, for your assistance this afternoon. We will continue our work and will continue to carry on this dialog with you to come up with the legislation. Thank you.

Our next panel consists of representatives of the museum community. May I call upon the Director of the Museum of Northern Arizona in Flagstaff, Philip Thompson; the Director of the Museum of New Mexico in Santa Fe, New Mexico, on behalf of the American Association of Museums, Tom Livesay; Professor of the Department of Anthropology at the Arizona State University on behalf of the Society of American Archaeologists, Professor Keith Kintigh;

and the Chairman of the Anthropology Department of the Bishop Museum, Elizabeth Tatar.

I have been advised that the Director of the Museum of New Mexico has to get on a plane, so may I call on Director Livesay?

STATEMENT OF TOM LIVESAY, DIRECTOR, MUSEUM OF NEW MEXICO, SANTA FE, NM, ON BEHALF OF THE AMERICAN ASSOCIATION OF MUSEUMS

Mr. LIVESAY. Thank you, Mr. Chairman. I appreciate it and hope you will give me the opportunity to answer questions of the committee also.

Mr. Chairman and members of the committee, my name is Tom Livesay, director of the Museum of New Mexico, and I appreciate this opportunity to present this statement on behalf of the American Association of Museums. The AAM is the national service organization for museums across the Nation, representing more than 2,500 art, history, natural history, and science museums and over 8,000 individual members.

At the outset, we want to commend you, Mr. Chairman, and Senator McCain for you leadership in focusing the attention of the Nation and the museum community on this important and complex topic. Today, we present our general observations on this issue of repatriation.

The standards and practices of museums 90 years ago bear little resemblance to the standards and practices of museums today. The role and activities of museums in collecting and interpreting objects produced by Native Americans exemplifies the evolution of prevailing social attitudes in our society as well as leadership in the formation of some of those attitudes.

At a time when Native American art and cultural material was widely considered to be nothing more than curios by the general American public, museums exercised social leadership by collecting objects they recognized as art and important and significant cultural materials. By exercising such leadership, museums helped preserve Native American culture and eventually helped change social attitudes toward Native Americans.

Many, but by no means all, museums have undeniably failed to meet or even recognize emerging new social values and professional standards with respect to Native American human remains or culture. Some practices routinely conducted in the past by museums are not properly viewed as lacking in appropriate and deserved respect and sensitivity to Native American rights, beliefs, and concerns.

The relationship between museums and Indian tribes and groups has grown and improved over the years, thanks to increased awareness of the issues. There are stories of strong cooperation and collaboration—stories that must be duplicated in other museums, from those in my own Southwest to each corner of the Nation.

The Museum of New Mexico, due to its location and longevity, has been engaged in a continuous relationship with Native Americans for the past 81 years. The museum has extensive collections of southwestern material, both historic and prehistoric. By law, the museum also acts as a repository for human remains. Over one-half of those remains represent a number of Federal agencies.

Beginning in 1987, the museum began a close examination of the need to hold these remains. A committee which included Native Americans on our board and on our staff was formed for the consideration of dealing with sensitive material that could be deemed as culturally significant or sacred to the various tribes.

The end result on this committee was a recommendation to the Board of Regents for a policy change for the Museum of New Mexico from a reactive policy to a proactive policy. The new policy places the responsibility within the museum and to consult with the tribes regarding possible repatriation.

The museum began with the Zuni Tribe for repatriation of human remains. The museum informed the tribe that it has human remains in its care that had come from Zuni lands. Last November, the Zuni responded that they wished the museum to continue in its caretaker role and to care respectfully for the remains within the terms of its new policy.

In addition, this caused the Zuni Council to draft a new policy of its own. We expect that other tribes will have different opinions than the Zuni. The museum has followed up on this initial contact with six more tribes.

The Museum of New Mexico is not the only one that has developed positive relationships with Native Americans and made Indian tribes and groups a permanent part of their programs. In spite of these efforts though, we recognize that many museums have not been responsive in developing a relationship with their Native American constituencies.

More museums must initiate new relationships, and the AAM must be a partner in that effort. New and expanded ethical principles, standards of practice, and policy guidelines are presently under development with the AAM regarding Native American human remains and cultural materials. Compliance with these new principles, standards, and policies will be enhanced through the addition of a new AAM Ethics Commission which will have the power to censure a museum or withdraw its membership for compliance failure.

I must report to you today some concerns from the museum community with regard to the legislative proposals. Many museums have questioned the definition of cultural patrimony in the legislation. The broad definition of the term would impost extremely difficult practical problems for museums in the areas of cost and time involved in handling inventories of several million objects, in the notification of tribal groups that may have cultural affiliation, and in the number of claims that may result from the inclusion of this term.

Also of major concern to many AAM members are the provisions for inventory required in S. 1980 and in the proposed substitute amendment. The most difficult problems will arise with the identification of cultural affiliation for objects that in some collections amount in the millions. To determine the cultural affiliation, identification of tribes and groups within tribes, to whom these objects have cultural affiliation, to send notification to tribes and groups, and to finance this task will be a major and costly initiative for museums and for the Federal Government.

There are also concerns over the legal issues that may arise. These include: Determining the legal title, the acquisition standards already mentioned, the competition between State property and tribal laws and customs as they relate to property, expenses incurred in attempting to determine legal title and cultural standards of objects in collections under the definitions given, and protracted litigation that might arise due to the broad scope of the legislation, particularly as it conflicts with the fiduciary responsibility of museums. The AAM intends to submit to the committee a more in depth delineation of the legal issues that are of concern to museums on this issue.

Mr. Chairman, we agree with the finding contained in the substitute amendment that the disposition and treatment of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony should be governed by respect for the human rights of Native people and for the values of scientific research and public education. Museums are institutions that should, at their best, serve as research facilities and educators of the public while respecting the human rights of Native peoples and of all peoples that enter our doors.

The American Association of Museums appreciates the need to create a new and stronger relationship between museums and Native Americans. It is our desire and intent to help create such relationships, and in doing so, enable America's museums to exercise leadership in partnership with Native Americans in helping shape broad public sensitivity and appreciation of Native Americans, their art, and their culture.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Livesay, before you leave, I would like to ask you a few questions.

The first witness stated that the Federal Government has one policy relating to human remains, but different practices. Do you have one policy to cover human remains of all ethnic groups, or do you have a policy for Native American Indians and one for non-Indians?

Mr. LIVESAY. Mr. Chairman, our policy covers all ethnic groups, and at this time, we do have Anglo remains within our custody and care, sir.

The CHAIRMAN. But do you have the same practice relating to all of them?

Mr. LIVESAY. That's correct, Mr. Chairman, we do.

The CHAIRMAN. So if an Anglo-American came up to you and said, "You have the skeletal remains of my great, great, great, great grandfather," what would you do?

Mr. LIVESAY. We have exactly that case under consideration at this time. We have 31 remains of Confederate soldiers recently discovered from the battle of Glorietta Pass, and we do have the great, great grandfather of some people that have identified these remains.

It is our desire to return those remains. We have asked their opinion as to where they would like the remains to be reinterred and we are now waiting for those decisions to be reached from the various members of the family.

The **Chairman**. And you are doing that with Native American Indians?

Mr. **Livesay**. At this time, Mr. Chairman, we have contacted not only the Zuni Tribe, but also six other tribes, and asked their opinion and their assistance with regard to not only the human remains that are under our care, but also the sacred objects that are within our care.

The **Chairman**. Do you agree with the general proposition that if an item has been illegally acquired or stolen or taken under duress, that it should be returned to the rightful owner?

Mr. **Livesay**. Mr. Chairman, I think this is blatantly obvious, certainly to any museum that would be accredited by the American Association of Museums, that such practices would never be endorsed or condoned.

The **Chairman**. One of the major concerns expressed by museum representatives has been the definition of cultural patrimony, as you have indicated. May I request that you submit to this select committee your definition or your alternative language to cover cultural patrimony? We would like to study that.

Mr. **Livesay**. Yes, sir; we would be glad to do that.

[Material to be supplied appears in appendix.]

The **Chairman**. Thank you very much, sir.

Mr. **Livesay**. Thank you for your courtesy.

The **Chairman**. And I wish you a good voyage back.

Mr. **Livesay**. Thank you, Mr. Chairman.

The **Chairman**. May I now call upon Dr. Thompson, Director of the Museum of Northern Arizona.

STATEMENT OF PHILIP THOMPSON, DIRECTOR, MUSEUM OF NORTHERN ARIZONA, FLAGSTAFF, AZ

Mr. Philip Thompson. Thank you, Mr. Chairman. I am very appreciative of this opportunity to address the committee on S. 1980 concerning the repatriation of Native American patrimony.

This is an important topic and one that has major significance to Native Americans, museums, anthropologists, and the public. However, this is not a simple issue and many people, institutions, and groups have strong feelings and concerns.

There is now a significant history to this legislation and it has undergone major change and revision from its original form when introduced by Senator Melcher. This is a positive development because many parties have provided data to the process and we have advanced over where we began.

Indeed, the so-called Heard Museum report is just such an example of this synthesis at work. There are many others, including position papers from the American Anthropological Association, the Society for American Archeology, various museums and numerous interested groups and associations.

Feelings have run deep and many valid concerns have been expressed on both sides of the issue. Some differences still remain, but I think that they can and should be resolved. Let us work on these areas of differences together while we acknowledge what we have agreed upon so that we might move forward together.

It is now clearly the time to bring this dialog to a sensible and workable conclusion, and I urge you and the committee to do just that.

Let me provide a brief review of what I know of this situation. Understand, however, that I speak for no one but myself and my institution, the Museum of Northern Arizona. While I am a member of the American Association of Museums, the Association of Science Museums Directors, and the American Anthropological Association, I do not speak for any of them. Thus I am free to speak my own mind. I am here because my position is that of Museum Director, one who will have to respond to the legislation you pass and who has and will continue to have interaction with my museum's Native American constituency.

I am uncomfortable that the process has been as acrimoniously partisan as we have seen so far. It seems that museums and Native Americans have been on opposite sides of a bitter issue. This should never have been the case.

Museums and anthropologists have historically and in innumerable instances been great friends, supporter, and advocates for Native Americans and their rights. Conversely, Native Americans have been equally important and concerned for us, our collections, and for science. We have both been portrayed as adversaries when, in fact, we are more often allies.

I believe that the reason for this state of affairs is that we have come to believe that one side would prevail because it was right while the other side would lose because it was wrong. This is not true. Neither side is completely wrong and both are right.

This is not a case of good guys and bad guys. Both have merit. This is a case where the determination is not who, but where—where the line of reason lies. It is a situation where there are superior and inferior rights and values. The superior right is that of intrinsic human rights. Then, as with the wonderful example of the American Government itself, we must look to balance and to checks on power as the answer.

Society values both of these applicants, Native Americans and museums. Native Americans have been abused, mistreated, ignored, forgotten, and now, hopefully, their rights are being remembered. They are Americans—no better; no worse. They deserve to be treated as Americans with the same rights, privileges, obligations, and responsibilities as any of their Anglo brothers and sisters. However, there are special circumstances, and that is because the Government of the United States has recognized Native Americans collectively and tribally as a unique case.

They are the original Americans and have limited national powers. But they are Americans and still deserve equal protection of our laws and society. We do not hold the grandparents of Anglos for study in significant numbers. Why should we do that to others?

There is no answer. Why should we display the intimate physical remains of Native Americans when we do not do so with others? There is no answer. Why do we trivialize the religion, history, and origin belief of Native Americans when we do not do so with others? There is no answer. Why do we treat Native Americans differently at all from other Americans? There is no answer.

There is no answer except the obvious one. We should treat all people with respect and equally.

Now, museums are not places of horror. They, too, have an honorable place in our society. They are the intellectual and practical repositories of our cultural patrimony, all of our cultural patrimoneys, Anglo, Native American, Hawaiian, African-American, Hispanic, and many others.

Museums celebrate our commonality while they show our diversity of origin. They are the most appropriate place to hold collections of, to study, and to educate us about ourselves. That is their role and it is an honorable one. It is strange then that Native Americans and museums have been at odds over this matter.

Let us make some sense of this. As a museum director, I have no interest in alienating a major and important constituency. I also have no interest in giving away collections which have intrinsic scientific value and for which I and my board have a fiduciary responsibility. What are we to do?

There are four areas of discussion that I have heard. These are areas where we both have rights but where we must accommodate each other because of our values and what we bring to society.

The first is in the area of Native American human remains. Here, I for one, have no argument with the Native American position. I simply believe that they are right and that museums should return human remains. I would only ask that in cases where the remains are not specifically culturally associated that museums have a period of time—and I don't know what that period of time might be—to complete studies before reinterment.

It is true that science could be served if these collections were kept in perpetuity, but that need or that right, it seems to me, is inferior to the right of Native Americans to have the same rights that the rest of society has in the matter of internment of human remains.

The second area of disagreement is supposed to be with respect to "Sacred and Ceremonial." I am surprised that this is the case. It is not so at the Museum of Northern Arizona.

Items of this designation, properly in my view, belong to the Native American group or tribe that produces and has utilized these materials in religious ceremonies and activities. Here, I feel that the right to practice the religion of choice for Native Americans is the dominant factor.

I would not feel qualified to make decisions on what is or is not sacred. That should be a Native American decision, and museums should honor that right, not argue it.

Third on the list is with respect to cultural patrimony. I take this to mean significant objects such as the Onondaga wampum belt or Zuni war gods or the like. I do not disagree here either.

Clearly, these items are of enormous significance to the respective Native American societies. I would only ask that this category have limits on it so that it is not so broad as to be undefinable.

Items that are interesting, valuable, beautiful, or desirable are not necessarily essential cultural patrimony. I think that some cooperative work between museums and Native Americans could quickly lead to mutually acceptable definitions which allow for the repatriation of vital objects while still protecting museum collections. At any rate, I would be happy to try to work this out.

The last area of supposed disagreement has been with respect to funerary goods. Here, too, I think that the controversy is more illusion than reality.

There are two types of funerary goods—those that are associated with remains, which I call associated, and those which may have been at one time but, for whatever reason, are no longer—essentially unassociated. I have no argument with the repatriation of associated funerary goods and believe it is just and right that they be reinterred along with the remains. I would only caution that these sites be kept confidential, with access controlled, so that they not fuel an illegal new practice of pot-hunting of reburials.

In the instances of unassociated funerary goods, I would hold that these goods should stay with museums as a part of the role that museums play in this country as keepers of a multi-cultural patrimony for all citizens. Certainly, the unassociated materials were once associated with individuals or sites, but they are no longer.

They have been changed to being material culture remnants rather than personal attentions because of the lack of association. This is unfortunate and is often the result of illegal pot-hunting or other unethical practice, usually by private citizens, however, it is a reality.

It is also a reality that these objects, vast in number, constitute much of what is know of some cultures, the Sinagua and Mimbres, for example. For these materials to be lost to the world would be a tragedy. It is the appropriate role of museums to protect and maintain this heritage. I would urge that they be allowed to do this for all of our sakes.

Next, I am pleased to see that the latest revision proposed to S. 1980 contains a section on grants. This is essential. It absolutely must happen if this matter is to be resolved.

The absence of appropriate funds would make it impossible for my institution and many, many others to accomplish the inventory requirements. Were we required to perform the inventory without financial aid, this would bankrupt, literally, our institution. This is not in anyone's interest. The money for this program will be significant, but it is essential.

Finally, I would ask that members of the museum community join with Native Americans, not with another dialog on the theoretical, but with Congressional staff to work on the specific definitions, details, and workings of legislation that would move us ahead together. Our interests are the same. We want dignity, understanding, and preservation of culture. The time has come to put our earlier disagreements behind us and to work to make this happen. We can and must do this now.

Thank you. I will be happy to answer any questions that you or the committee members may have, Mr. Chairman.

[Prepared statement of Mr. Thompson appears in appendix.]

The CHAIRMAN. Mr. Thompson, I thank you very much. Regretfully, I must leave now, and the Chair will be assumed by the Vice

Chairman, my good friend from Arizona. Before I leave, I would like to ask a few questions of you.

Mr. Philip Thompson. Certainly, Senator.

The CHAIRMAN. It is obvious from your testimony that we will have some difficulty defining sacred and cultural patrimony. You cited examples like the Onondaga wampum belt, and no one disagrees with that. But your associates are concerned about how far this will extend.

As you suggested, my staff is ready to sit with you and with the Indian leaders to come up with workable definitions of cultural patrimony and the word sacred. I hope you can make yourself available for that, sir.

Mr. Philip Thompson. Mr. Chairman, I would certainly be delighted to do that. I think that is a very positive step and one that would help out.

I can not believe that if the two groups were together trying to do something that would be of obvious benefit to both sides that we could not come up with something.

The CHAIRMAN. Thank you, sir.

Senator McCain. [assuming chair]. Welcome, Mr. Kintigh. Please proceed.

STATEMENT OF DR. KEITH KINTIGH, PROFESSOR, DEPARTMENT OF ANTHROPOLOGY, ARIZONA STATE UNIVERSITY, ON BEHALF OF THE SOCIETY FOR AMERICAN ARCHEOLOGY

Dr. KINTIGH. Mr. Chairman, the Society for American Archeology is grateful for this opportunity to express our general support for the draft substitute of S. 1980 and to raise a few concerns. I will summarize my prepared statement but ask that the complete statement be inserted into the record. I would also like to offer for the record a statement by Lynne Goldstein and Mike Moratto, other members of the Heard Panel.

The Society for American Archeology is a scholarly and professional organization composed of professional and avocational archaeologists committed to the scientific investigation, interpretation, and preservation of the archeological heritage of the United States. I note that the Archeological Institute of America and the Society of Professional Archaeologists also support the position of the Society for American Archeology.

We are not here to defend the status quo. In addition to the changes proposed in this bill, Native American concerns must be incorporated into archeological research and Native Americans should more often benefit from the knowledge gained from scholarly research. That said, let me proceed to talk about the bill.

Although the current draft of S. 1980 still needs revision, it can be an important vehicle for the appropriate repatriation of human remains and objects, the enhancement of Native American access to and knowledge about their heritage, and the protection from looting of Native American cemeteries. We are grateful to Senators Inouye and McCain and to the committee staff for moving so far toward a positive and workable bill.

I will first mention what this legislation would accomplish. Repatriation, of course, is the central goal.

Anthropologists are painfully aware of the fact that repatriation may result in a loss of information about the past. However, we recognize that where a modern group has a reasonably clear cultural affiliation with human remains or objects, that group's desire to control its own material heritage should take precedence over the broader scientific and public interests.

S. 1980 deals effectively with these cases. It requires a finding of cultural affiliation within the context of a case by case consideration of repatriation requests by specific Native American groups. Through its definitions, particularly that of cultural affiliation, the bill properly accepts the responsibility to ensure that human remains or objects are returned to the appropriate groups.

The committee should know that repatriation does not occur only when it is legally mandated. In the absence of legal requirements, good faith negotiation among Native Americans, archaeologists, and museum professionals frequently result in decisions to repatriate human remains and objects.

Next, we strongly support the inventory and identification of human remains and objects in museum collections and we support the notification of groups with which the remains or objects may be affiliated. It will not only provide Native American groups with the information necessary to prepare repatriation requests, but it will make available to them a tremendous amount of information about their heritage. However, we hope that the committee recognizes the immensity of this costly task that is mandated by the legislation and that the Congress will be prepared to appropriate the necessary funds.

The section dealing with the ownership of human remains and artifacts has the potential to become an invaluable tool for halting the looting of Native American graves. For decades, the Society has worked to stop the looting of Native American sites. One of our current initiatives, "Save the Past for the Future," has this as its goal.

Despite strong Federal and State laws, the antiquities market continues to stimulate widespread looting, particularly on private lands. The provisions of this bill should be clarified to outlaw any unauthorized excavation of Native American graves, no matter where it occurs.

Through the ownership and sale provisions of the bill, we see the opportunity to attack the market for human remains and funerary objects, as Mr. Echo-Hawk has remarked. Elimination of the market for these items by prohibiting their sale or purchase would do far more to protect Native American human remains than all other provisions of this bill and all other antiquities legislation combined.

In an attachment to this testimony, we have detailed specific concerns and suggestions. One has to do with the excavation of Native American human remains and objects.

The bill flatly prohibits the disturbance of Native American human remains and objects without consent of the heirs and culturally affiliated groups. While we are sympathetic with the intent, as it stands, we see this section as unworkable. It would stall construction projects nationwide, resulting in what we can only imagine would be unpleasant political consequences for all of us.

It needs to be changed to account for the diverse situations to which it applies, recognizing that nearly all Native American graves now excavated by archaeologists are moved because of imminent destruction due to development. The section must allow for unavoidable disturbance and for situation in which it is not possible to determine cultural affiliation prior to the excavation.

However, as soon as cultural affiliation can be determined, the concerns of Native Americans about the treatment and disposition of the remains or objects should be incorporated into the decisionmaking process.

Notwithstanding any other law, this bill removes Native American human remains and objects from the definition of "archaeological resource," except where penalties for unauthorized disturbance are imposed. While this sounds innocent enough, and we appreciate Mr. Echo-Hawk's concerns, we fear that the unintended effect might be to exclude Native American human remains and objects from Federal protection against Federally-authorized destruction. We need to move carefully here.

On definitional matters, the meaning assigned to the term "legal title" has great importance for the sections dealing with the sale of remains and objects and for the section concerning repatriation. However, we simply do not understand how this term would be applied and believe that it should be defined. A stringent standard of legal title, which we would support, will both increase the effectiveness of the section prohibiting the sale of artifacts and will facilitate the repatriation process for Native American groups.

Finally, because S. 1980 has the responsibility to ensure that when remains or objects are repatriated they are returned to the appropriate groups, we are pleased that it does not, at present, attempt to deal with the unaffiliated remains.

In conclusion, the Society for American Archeology sees many strengths in this legislation. We generally support the inventory and repatriation provisions, and urge strengthening of the sections prohibiting the sale of Native American human remains and objects and outlawing the looting of Native American sites. We are grateful to the authors of this bill for taking this courageous stand against the pillage of Native American heritage. We pledge to work with you to stop this destruction.

On behalf of the Society for American Archeology I thank you for this opportunity to testify on this important legislation, and we stand ready to work with the committee or any other parties on it.

[Prepared statement of Dr. Kintigh appears in appendix.]

Senator McCain. Thank you very much.

Ms. Tatar.

STATEMENT OF ELIZABETH TATAR, CHAIRPERSON, ANTHROPOLOGY DEPARTMENT, BISHOP MUSEUM, HONOLULU, HI

Ms. Tatar. Thank you. I apologize for the condition of my voice. I have laryngitis and am recovering from a cold.

Senator McCain. That's all right.

Ms. Tatar. Thank you very much for the opportunity to testify on this draft proposal. I should say that although it was I who prepared this statement, it was done so in close consultation and agreement with Dr. W. Donald Duckworth, the President and Director of Bishop Museum in Honolulu, Hawaii.

As a staff member of the museum's Anthropology Department for the past 13 years, of which only 5 months has been as Chair, I am most familiar with the problems and concerns of the Native Hawaiian community as they relate to the museum's collections.

Bishop Museum has always strived in its more than 100-year history to maintain a good working relationship with the Native Hawaiian community and actively continues to seek ways to improve these relationships.

The museum was, in fact, established in honor of a Native Hawaiian chief, Bernice Pauahi Bishop, as a repository for Hawaiian and Pacific cultural and natural history. The museum as a whole regards the founding collections—as well as the Hawaiian materials they themselves collect, preserve, and study—as held in trust for the Native Hawaiian community. Indeed, Native Hawaiian materials make up the great majority of our collections.

We therefore support the intent of this act, as it generally reaffirms the unquestionable responsibility of museums to the communities they serve, both as repositories of the communities' cultural patrimony and as recipients of their support, and as it specifically gives Native Hawaiians control over the collection, study, and display of the must culturally-sensitive material in museum collections: the skeletal remains of their ancestors and sacred objects.

Repatriation is not new to Bishop Museum. Human remains, as well as items of cultural patrimony, have been repatriated upon request for several years to both Native Hawaiians and Pacific Islanders. For example, some 375 Hawaiian burials have been released for reburial, and some 250 are in the process of being released. The museum is comfortable with the process guiding these releases. This process is coordinated by the Hawaii State Historic Preservation Office in ways that ensure that the reinterment plans meet all legal and regulatory requirements and are agreeable to all concerned.

Until recently, analysis was usually conducted on the skeletal remains to be reburied. Analysis on the collections of human remains from now on will be carried out only with the agreement of the appropriate Hawaiian organizations, if at all, a procedure guided by recently-passed Hawaii State legislation. In the near future the museum will be proposing the establishment of a special panel of representatives from the appropriate Native Hawaiian organizations to control access to the skeletal collections and to particularly sensitive and sacred objects.

The museum has served and continues to serve as a State and Federal repository for human remains excavated and discovered by both museum and non-museum staff. These collections of remains are not owned by the museum; rather, they were placed in the museum on temporary loan. Of the approximately 2,590 Hawaiian human burials in the museum collections, 1,230 belong to the United States Federal Government. These were removed from lands owned by the military branches and the National Park Service.

Conducting and maintaining collection inventories are basic museum responsibilities. Inventories of culturally sensitive materials are particularly important to have. We do not view the inventories mandated by the proposed legislation as causing undue hardship. We realize that community access to all the museum collections must be maintained, requiring that additional personnel be hired to provide the best available identification of human remains, funerary objects, and sacred objects. We note with pleasure that the act will provide the funds to do so. Indeed, we would welcome the opportunity to improve and increase the information in our existing collection inventories and catalogs to better serve the needs of the Native Hawaiian community which, in turn, will benefit the scientific community.

Although the language of the legislation, particularly in its description of the responsibilities of the Review Committee, may be construed by some to promote adversity rather than cooperation and mutual assistance in the process of repatriation, we do not believe it will result in the removal of all Hawaiian collections from Bishop Museum, nor do we view it as being necessarily detrimental to the scientific community. On the contrary, students of Native American collections in museums stand to learn a great deal more by being actively involved with Native Americans from the very start of their research projects. In the case of Bishop Museum, the legislation would formalize what already has been practiced, thereby ensuring greater and more meaningful involvement of the Native Hawaiian community in the museum's future.

Thank you.

[Prepared statement of Ms. Tatar appears in appendix.]

Senator McCain. Thank you very much.

Thank all of you for being here.

Ms. Tatar, earlier we heard from Mr. Myron Thompson regarding a potential amendment for funding a survey for Native Hawaiians' remains and objects. What are your views on that proposal?

Ms. Tatar. I would heartily support that. There are a great deal of Hawaiian materials in Europe.

Senator McCain. Your testimony discusses the successful track record that the Bishop Museum has with repatriation of Native Hawaiian remains. Has that been expensive?

Ms. Tatar. Yes; I suppose it has been. I don't know exactly how much it has cost us.

Senator McCain. Perhaps you could supply us, for the record, some of the expenses involved that the museum has incurred in carrying out this process. We would appreciate it.

Ms. Tatar. I would be happy to.

[Information to be supplied appears in appendix.]

Senator McCain. Thank you.

Mr. Thompson, thank you for being here. How has the Museum of Northern Arizona, under your leadership, worked cooperatively with some of the Arizona tribes?

Mr. Philip Thompson. Senator, primarily our work with them has been prospective work, no. 1, where we have, as a result of our activities, developed some protocols for work that we might do in the future. As an example, the museum did a major excavation on Apache land at the White Mountain Apache Reservation. We came across many human remains and many funerary goods. We had a

90-day period to examine them, and then they were turned over to the tribe for interment.

The museum itself also has significant numbers of sacred and ceremonial objects that belong to Native Americans. However, we hold none of these for the museum. These are all objects that the Native American community has come to us and asked us to hold for them. Essentially, our role has been to hold them in a confidential nature, and also to provide opportunities for any sacred care, such as feeding of the collections, that might be required. Essentially it has just been an open dialog about whatever the problems have been, Senator.

Senator McCAIN. So if this legislation were passed, it would have minimal impact on the way your museum does business?

Mr. Philip Thompson. It would have minimal impact, Senator, assuming that funding was there for the inventory. Then it would. Without funding for an inventory, we would have tremendously significant and detrimental impact upon the museum. But procedurally, it would not be materially different than what we are already doing.

Senator McCAIN. Can you supply us, for the record, a cost estimate of what you think it would cost?

Mr. Philip Thompson. The one that I can provide, not having any of my own, is the one that Dr. Ray Thompson from Arizona State Museum has provided. I think his estimate is somewhere in the order of $500 to $600 for investigation of physical remains. It could be less or more than that on particular items of generally-called cultural patrimony, depending upon the circumstances.

Senator McCAIN. Thank you.

Dr. Kintigh, it has been suggested that this legislation would result in a proliferation of litigation. Do you agree with that view?

Dr. KINTIGH. I do not. My own experience, which has been primarily in the Southwest, has been that we do have very good working relationships with many groups. I think that Mr. Thompson's experience is reflected by many other Arizona museums where there is a good working relationship. I do not think there will be a flood of requests, at least to Southwestern museums, requesting things because I think that museums in many cases have been responsive to those requests.

Senator McCAIN. In your testimony you express concern regarding the term "Native American sacred object." How would you propose to narrow the definition in order to define what is sacred to a Native American group?

Dr. KINTIGH. I don't believe that I have a terribly well thought-out suggestion. My suggestion that I proposed would be to delete the second part of the definition. The first part of the definition states that the object should be devoted to a Native American ceremony. The second part said something to the effect, "or is used in that ceremony." I think that to the extent that the first part of the definition conveys the importance to that ceremony, it is important.

The "or is used in," in my mind, introduces a great indeterminacy. Lots of artifacts could be used in the performance of a ceremony that aren't in any way essential to it. They are just coincidental to that. It raises the question to a museum, which is trying to do a good faith inventory, to say, "Well, could this have been a sacred object?"

I think in many specific cases we can agree about what those sacred objects are. I think it's a very difficult proposition to define them.

Senator McCAIN. Mr. Thompson's view, I believe, is that it is up to the tribe to determine that. Do you disagree with that?

Is that right, Mr. Thompson? Is that your view?

Mr. Philip Thompson. I think, Senator, that the answer to that from my perspective is that it is predominantly right. I would certainly like the opportunity, and assume that others in the museum community would as well, to sit down with them in a cooperative effort, but in absence of an absolute in this matter, I think we have to be guided by the sense of the Native Americans.

Mr. KINTIGH. It's my understanding of many Native American cultures that there is not as well-defined a distinction between sacred and profane, between the public and the sacred, as there is in contemporary western American society. Therefore I think it is important, probably, to have a definition of some sort to provide some guidance. I think the fear that in extreme cases somebody could say, "Well, gee, almost anything has some sacred character." So I think it would be useful to put some limits on that sacredness, to provide some general Congressional intent on what that means, because I think there is a potential for abuse, although I don't see it happening very often.

Senator McCAIN. Thank you. Thank you all for being here, and we appreciate your testimony. Thanks a lot.

Now we will hear from Suzan Harjo, Jerry Flute, and Clarence Ching. I understand that Clarence Ching may be accompanied by Linda Delaney and Lydia Mai'oho.

Mr. FLUTE. Mr. Chairman, with your permission I would like to have Dr. Emery Johnson assist me here.

Senator McCAIN. That's fine. We're always glad to have Dr. Johnson with us.

Mr. FLUTE. Thank you.

STATEMENT OF JERRY FLUTE, ASSOCIATION OF AMERICAN INDIAN AFFAIRS, NEW YORK CITY, NY, ACCOMPANIED BY DR. EMERY JOHNSON

Mr. FLUTE. Mr. Chairman, my name Jerry Flute. I am a member of the Sisseton-Wahpeton Sioux Tribe of South Dakota, and am also the Assistant Director for the Association of American Indian Affairs, which is a national, nonprofit organization, 65 years old, that came into existence to help tribes protect their sovereignty, land rights, and human rights throughout this country.

Before I begin a summary of my testimony I would like to make several references back to questions that you raised earlier to Mr. Rogers of the Park Service regarding the proposed policy coming out of Interior that would include the handling and repatriation of human remains in their possession.

I attended one of the meetings, probably one of the most recent, which was held about 5 or 6 weeks ago here in Washington. It is true that there were several tribal people at that meeting who urged Mr. Rogers not to act hastily in releasing a policy statement that pertains to Native Americans, that there was some question as to whether the consultation process was thorough. I think the Park Service entertained two meetings, one in Las Vegas and one here in Washington, DC. I'm not sure how many people were in attendance, but there was some question as to whether this was proper consultation with Indian people, to constitute legitimate consultation to begin developing a national policy that the Park Service and Interior would follow.

Second, there were questions raised as to the policy of the Park Service. As I recall, Senator Inouye raised a question on how the Park Service treats human remains of non-Indians that are found, and a question as to whether or not there was one policy and two standards when it came to the treatment of Indians. Just recently the Custer Battlefield has agreed to also memorialize the Indians who were killed in that battle, along with all the soldiers who are already memorialized there.

Certainly, in my opinion, there are two standards in many of the agencies that have Indian human remains in their possession. One of the issues that is beginning to surface in South Dakota now is the fact that in 1890 at the Wounded Knee Massacre there were over 30 Medals of Honor given to members of the 7th Cavalry for killing defenseless men, women, and children. There is a move to strip those families of those medals. I would suspect that there are—

Senator McCain. Let me tell you, that is a waste of time, because I don't see that we're going to revisit history in that fashion. Perhaps it should have been done otherwise, but I certainly would not support such action.

But let me go back to your first statement, if I could. I didn't understand it. Do you feel that there has been sufficient consultation with Indian tribes, or there has not been? Or what, in your view, needs to be done in order for us to assemble the proper amount of information and move forward on this legislation?

Mr. Flute. At this point, Senator, I am only expressing the fact that since Mr. Rogers named me as being one of the people in attendance, I am explaining to the committee what I heard at that meeting. I was not at the other hearings.

Senator McCain. But my question is, Mr. Rogers stated that you were one of the individuals who felt that there had not been sufficient consultation conducted, if I remember his statement. My question to you is, is that indeed the case? And if so, what more needs to be done?

Mr. Flute. Let me begin by telling you that the work that I do for the Association of American Indian Affairs is field work. I am working with people, particularly traditional people, spiritual leaders. I am not working so much with tribal governments or tribal councils.

What occurs many times at these national meetings is that people who need to be there are the people least financially able to afford to get there, and are unable to express their views. When meetings are held in Las Vegas, Nevada, many of the traditional people feel that that's a vacation. When meetings are held here in

Washington, DC, they are unable to get here because they don't have the financial resources.

To answer you directly, Senator, I think there ought to be more consultations. There need to be field hearings and there need to be field meetings in locations where elderly, traditional people, spiritual leaders can come there and express their thoughts. Many tribal governments are not speaking on behalf of the traditional people, nor are they reflecting the views of the traditions of these people.

Senator McCAIN. Thank you. Thank you very much.

Mr. FLUTE. One other piece of information, Senator McCain, is that when you were discussing the Interior Department's policy on repatriation—I don't know whether you are aware of this, but the Park Service has actually issued a report on an inventory of Indian human remains in their possession. As I recall here, there are probably close to 4,000 Indian human remains, and looking at the inventory I would suspect that maybe half of them come from the Southwest. I don't know if you've seen that report.

One of the things that I noticed in going through this report is, lo and behold, even the Bureau of Indian Affairs has excavated graves and has over 100 Indian remains in the possession of the Park Service at this point. They are listed as 10 San Carlos Apache, 10 Tohono O'odham, and 80 Zuni Indians that were excavated by the Bureau of Indian Affairs. But that's a response to the previous questions that you raised.

Senator McCAIN. Thank you.

Mr. FLUTE. In our work with tribes throughout the country, we work predominantly in the area of protection of sacred sites. Obviously, burial mounds are also sacred sites. Part of our testimony includes a report that was commissioned by NARF, and I am sure you have this report by Professor Bieder. It gives a chronological history of how there was a systematic method in this country of robbing Indian graves throughout the country. It also attributes one of the very first grave robbers, going back to Thomas Jefferson, according to the researcher here.

But in reading this report, this is a very difficult report for an Indian to read. Earlier I talked about meeting with many of the traditional people. They constantly tell us that the white man won't believe you unless it's written in black and white. It's got to be written in black and white. Most Indian tribes in this country, their history and legends are oral. They are oral history. So today we have something written in black and white here. It's a very sad account of the atrocities. It's a shameful account of how museums— some of the museums that were here today actually competed with each other and hired people to rob graves of Native American people. I think this has been distributed to the staff and the members here as part of our testimony.

Without belaboring the committee, because it's been a long day, when the scientific community talks about the need to investigate and the need to research, that's the reason I've asked Dr. Emery Johnson to come here. We asked Emery if he would do research here in the medical libraries to see how many reports have actually been issued, based on scientific research of Native American human remains. For that reason, Mr. Chairman, I would like Emery to tell you a little about what he was able to find here.

Dr. JOHNSON. Mr. Chairman, I'd just like to make three very brief points.

First of all, my interest is in the prevention, diagnosis, and treatment of disease in humans and promotion of health of humans. It has nothing to do with paleoecology or paleodemography or some of those other scientific issues. Mine is based on the medical needs and the health care of Indian people.

It is true that in the past we have learned some things about the natural history of disease from ancient human bones, and we can speculate on potential advantages that we might gain from further research. But I must say that in going through the literature search at the National Library of Medicine, if substantial research had been done in recent years that had any potential to impact on the health of Indian people, it would be in the collections of the National Library of Medicine. You simply don't find things of significance in that massive collection of literature.

The second point is that if we could identify significant research that could be done on human remains, the fact that the tribes have the right to make those decisions does not foreclose that research. When we established the policy in the Indian Health Service that no research would take place in which we were in any way involved without the approval not only of the individuals involved, but of the Indian tribal governments involved, that did not bring to an end clinical research on reservations, as many of our research colleagues had claimed. What it did require was that those researchers would have to think a little more carefully, be a little more culturally sensitive, identify really significant and valuable research, not casual or interesting research, and present it to the tribal council for their approval. It put the control of research on reservations in the hands of the tribal government. It did not stop research. As you well know, the fifth floor of the Phoenix Indian Medical Center is a branch of the National Institutes of Health. Research has been going on there for years. Research has been going on at Gila River, Governor White's reservation, for over 30 years. Some of the major research on the pneumococcal vaccine was done on the Navajo. Some of the fundamental research on trachoma was done in the Southwest.

It doesn't stop research, but it puts the right perspective on it. That research has to be sensitive to that community, and the community has to be in control of it. To me, there is no reason to use the scientific value of human remains as the obstacle to doing what's right.

My final point is simply this, that I can't imagine the kind of benefit we might get from research on human remains that can compensate for the negative impact that this longstanding violation of human rights has had on the mental health of our American Indian and Alaskan Native communities.

My conclusion is that it's time to put this behind us and do what's right.

Senator MCCAIN. Thank you. Is that with all possible speed?

Dr. JOHNSON. Right now.

Senator MCCAIN. Well, how do you reconcile the requirement for further consultation and delay with the fact that we need to get it done immediately, Dr. Johnson?

Dr. JOHNSON. Well, to me, "all possible speed", Senator McCain, always includes appropriate consultation with Indian communities. There is never an excuse—

Senator McCAIN. So you're saying that it will require at least another year, as the Administration has stated?

Dr. JOHNSON. No; I don't believe there's any need for another year. We've been talking about this for how many years now?

Senator McCAIN. That's my point, Dr. Johnson. That's exactly my point. It seems to me that to go out and consult again all over Indian country on an issue on which there is clear consensus is a waste of time, and further outrages will be perpetrated while we spend the time in going out and consulting with people. Every place I go, every reservation I visit, every Native American that comes here to Washington—I have never met a single one who said to me, "Let's keep on doing what we are doing to Native American remains."

Frankly, I believe in consultation too, but to say that we're going to wait another 6 months or 1 year while we complete all this so-called consultation, to me that is not helpful in trying to address the issue.

Mr. Flute, please continue your testimony. I would appreciate it if you would summarize as well as you could, because we obviously have two more witnesses.

Mr. FLUTE. Yes; I will.

I would like to clarify this point on the Park Service business. When we talked about consultation, we weren't talking about the specific area of repatriation with the Park Service. They are doing a full-blown cultural plan. That's what we were talking about. I agree with you that it's long overdue, that this legislation ought to be passed. The Association commends you and Senator Inouye, that you have been championing this cause. This is not something that's new. It is finally brought into the forefront. We support the legislation. We had just a brief chance to look at the substitute. We think it looks good, and we support the legislation. Thank you.

[Prepared statement of Mr. Flute appears in appendix.]

Senator McCAIN. Thank you very much.

Ms. Harjo?

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT AND EXECUTIVE DIRECTOR, MORNING STAR FOUNDATION, WASHINGTON, DC

Ms. HARJO. I will be brief. You have my prepared statement—

Senator McCAIN. I think this is your 27th appearance before this committee. [Laughter.]

Ms. HARJO. Perhaps just this year. [Laughter.]

In addition to my prepared statement, the committee is well aware of the views that I have held over these years on these subjects and can well anticipate the content of my prepared statement, if you have not had an opportunity to read it.

Basically, I agree with your point, which is do it and do it quickly. There is no reason to delay on any of this. There is no need for further consultation. I commend the committee for working with Indian tribes throughout the United States and with Indian people and with the National Congress of American Indians, which I used to head, in crafting this very legislation that we are testifying on. The staff is to be commended for the work that they have done with regard to the National dialog on Museums and Native American Relations, and furthering that process by talking with all the interested parties and coming up with something that is a delicate rather than a heavy-handed balancing act.

We have certain concerns that we allude to, some that we detail. The Review Committee should be rethought, especially in light of what has happened with the appointments and the interpretation of the repatriation section of the new museum law over at the Smithsonian, where Indian people are now faced with a stacked deck. In order to avoid that outcome, there are some simple things that can be done, and we need to do that and do it quickly. That's basically a drafting problem and closing some loopholes that have allowed some seepage in the past.

We think it is very important that the interstate and international borders are closed to the transportation of our important materials, including our dead relatives, and only Congress can do that. It can't be done by anyone else.

The reports and inventories are essential not only to the purpose of this act, but they are essential in order to carry out what museums are about. They are about public education. If they don't know what they have in their collections, how can they possibly conduct research? How can they possibly educate the public in a meaningful way? The inventories and reports need to be done. If some appropriations are required for it, so be it, but it shouldn't be at the level that would overburden the act and overwhelm us to the point of a veto threat on the appropriations point. This is not the "National Museums Relief Act." This is the bill to bring some measure of justice to us and to end our national state of mourning.

I sincerely appreciate that you have looked in your heart and have seen what is in ours, and are going to do this quickly.

Thank you.

[Prepared statement of Ms. Harjo appears in appendix.]

Senator McCain. Thank you.

Mr. Ching, we had on the schedule here that you were accompanied by Linda Delaney and Lydia Mai'oho. Are they here?

Mr. Ching. I just wish it could be done in two parts. Lydia Mai'oho will start out, and I will finish up.

Senator McCain. Okay.

STATEMENT OF LYDIA MAI'OHO, CHAIRPERSON, NATIVE HAWAIIAN HISTORIC PRESERVATION TASK FORCE, ACCOMPANIED BY LINDA DELANEY, LAND AND NATURAL RESOURCES OFFICER, OFFICE OF HAWAIIAN AFFAIRS

Ms. Mai'oho. Aloha, Senator and members of the Select Committee on Indian Affairs. Thank you for the opportunity to testify on S. 1980, to provide for the repatriation of Native American cultural patrimony. I am Lydia Namahana Mai'oho, Chairperson of the Native Hawaiian Historic Preservation Task Force, and Curator of the Royal Mausoleum, or Mauna 'Ala. Also here to testify in support of this measure is Trustee Clarence Ching of the Office of Hawaiian Affairs to assist with any questions, and Linda Delaney, the Land and Natural Resources Officer of OHA.

We have come a long way, as you know, Senator. The issues addressed in this bill, the return of Native Hawaiian remains, ho'omoe pu or burial goods, and sacred objects to cultural heirs for proper and dignified care has been and is a subject of deep pain and sometimes great anger.

Their care is also an obligation, a duty which—if we do not answer its call—leaves us spiritually vulnerable and troubled. I am the keeper of Mauna 'Ala. I live on the same ground that holds the bones of Chiefs of Hawaii, the heirs of the Kamehameha line, and King Kalaukaua and Queen Lili'uokalani. Also there is Prince Jonah Kuhio Kalani'ana'ole, a royal son who served for more than 20 years as Delegate to Congress. Respect for Kuhio led this Congress to declare that only the Hawaiian flag would fly over Mauna 'Ala. Other traditional Native Hawaiian graves have not known this same dignity.

Only 1 week ago on the island of Maui, we witnessed the public ceremonies commemorating the reinterment of more than 1,000 Native Hawaiian remains to the sand dunes of Kapalua. Unmarked, the graves of the Honokahua family had been disturbed for the building of a resort hotel. Now, with the active support of our Governor, an appropriation of $5.5 million from the Legislature to purchase an easement, and the determination of the Hawaiian people, the Honokahua family has been returned and will never again be disturbed.

Other members of our Hawaiian family, though, are still without peace and away from home. We cannot sleep until they do. Right now, more than 2,000 Native Hawaiian remains are at the Bishop Museum in Honolulu, more than 300 others at the Smithsonian Institute, and others are at the Peabody Museum and throughout the United States and Europe.

With the leadership of the Office of Hawaiian Affairs, we are actively seeking changes in law and public recognition of the importance of the protection of our past to the quality of present and future lives. Last month, a State measure creating Native Hawaiian Burial Councils for each of the islands was unanimously approved by the State Legislature. A copy of that bill is attached for your information.

As described in this new law, OHA and the Department of Land and Natural Resources—the executive department whose director is also the State Historic Preservation Officer, required by Federal law—are charged to nominate the members of these councils, and to guide the development of administrative rules and regulations which will assure proper treatment.

Consistent with the approach of these councils, the Native Hawaiian Preservation Task Force recommends that you designate OHA as the lad in this bill, and mandate consultation with the burial councils and Native Hawaiian organizations, including Malama I Na Kupuna. In this way, we can be assured a clear and consistent delegation of responsibility and accountability.

I know the source and depth of caring which Malama I Na Kupuna has brought to this culturally sensitive and significant issue, but I also believe that the creation of councils and the State constitutional empowerment of OHA and the support of the overwhelming majority of Native Hawaiians lends strength to seeking this amendment.

We also have another concern with S. 1980, Senator, which I would like Trustee Ching to present.

Senator McCAIN. Thanks. Could I just interrupt for one second?

Lydia, I am informed by Lurline McGregor here, one of our very talented and dedicated staffers, that Senator Inouye encouraged the Hawaiian community to get together last year to decide who should be the lead organization to receive the remains. I understand that under the compromise, he named both the OHA and the Malama I Na Kupuna, both organizations, and that has been adopted in the pending legislation.

Is that satisfactory to you?

Ms. MAI'OHO. Yes.

Senator McCAIN. So that is satisfactory?

Ms. MAI'OHO. That's agreeable.

Senator McCAIN. Thank you. I wanted to make sure that you understood that.

Please proceed, Clarence.

STATEMENT OF CLARENCE CHING, TRUSTEE, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI

Mr. CHING. Mr. Vice Chairman, if I may, before I begin my regular testimony, I think that what we are suggesting here is that the Congress follow the lead of the State of Hawaii in designating one lead organization. Having two organizations that are sometimes in competition may be troublesome and create more problems.

If I may, I will continue.

Senator McCAIN. Sometimes it's the lesser of two evils—

Mr. CHING. Sometimes.

Senator McCAIN [continuing]. If there seems to be the division that we encounter here. But I think we're going to take this issue up again at a later time—is that right? Oh, we're going to leave it alone? Okay.

Please proceed.

Mr. CHING. I represent the Board of Trustees of the Office of Hawaiian Affairs. Aloha and thank you for your efforts in allowing us to address the concerns of Native Hawaiians.

Let me also say here, Senator, that the Trustees of the Office of Hawaiian Affairs are elected by the Hawaiian people. Right now we are elected by a registered number of roughly 63,000 Hawaiians.

As indicated by Aunty Namahana, we have another amendment to recommend. As now written, this bill only addresses the lands of the Hawaiian Homes Trust. We urge that all Federal lands under the jurisdiction of the United States be included.

As you know, virtually all of these Federal lands are "ceded," part of the Native ancestral lands taken at the time of the overthrow of the Hawaiian Kingdom in 1893, and subsequently transferred to the United States at the time of American annexation, and further described in section 5 of the Hawaii Statehood Act.

These lands are central to the Hawaiian tradition and form the basis for still unanswered claims for Federal recognition and restitution. These lands, whether now under State or Federal jurisdiction, are still traceable to a Federal relationship with the Hawaiian people.

To illustrate the importance of these lands to the subject of this bill, I would like to recall for this committee that the first large-scale disinterment of a traditional Native Hawaiian burial area occurred during the 1930's when the United States built Kaneohe Marine Corps Air Station. This is one of the groups of bones that the Bishop Museum has in their keeping that was earlier referred to; 1,000 graves were desecrated. Only the extraordinary efforts of Bishop Museum, literally running in front of bulldozers, prevented the wholesale destruction of these remains.

And 50 years later, these bones are still curated at the Bishop Museum. We have approached the museum and the Navy regarding the return of these remains. The museum is willing to repatriate these remains, but the Navy has been postponing the programmatic agreement which has been promised which would address the return of these bones to their land.

By including all Federal lands, we would have the additional assurance that such return could occur. Legal recognition of these rights is critical.

Within the Hawaiian culture, human bones are a metaphor for the sacred bond of place and family, of mortal strength and sacred power. Hawaiian expressions of kinship and linkage to the land—Na 'Oiwi and Ke Kula Iwi—refer directly to the bones and to family connections with particular areas as the Bone Land.

This bond is now broken. With your understanding, support, and these amendments, our ties to our ancestors and our lands can be restored.

Thank you.

[Prepared statement of Mr. Ching and Ms. Mai'oho appear in appendix]

Senator McCain. Thank you, Mr. Ching.

I am again informed that the legislation explicitly states that Federal and tribal lands are included. This would include all Federal lands in Hawaii, both fee and ceded Federal lands, as well as Hawaiian Home Lands. Does that satisfy your concern?

Mr. Ching. Very satisfying.

Senator McCain. Good.

Lydia, your testimony is that there are 2,000 Native Hawaiian remains possessed by the Bishop Museum; is that true?

Ms. Mai'oho. Please, 1 minute, Senator.

Senator McCain. Tell me, how has the Bishop Museum responded to the concerns of Native Hawaiians regarding these remains, in your view?

Ms. Mai'oho. There are two there that I am very interested in, and those two are the last two that were in the mausoleum before all of the bodies were buried on the outer grounds. That was our two greatest Chiefs in Hawaii, which was Lonoikamakahiki and Umioa-Liloa. Those are the two that I was really interested in bringing back, but there are many—about 2,000 Native Hawaiian remains—at the Bishop Museum, which is true, which is what

Clarence just said, over 1,000 from the Kaneohe Marine Air Station—

Senator **McCain**. My question is, how have relations been with the museum as to repatriation or disposition or respect? Perhaps would Mr. Ching like to answer?

Mr. **Ching**. I think I can add a little bit of light to that.

Recently, in the last year, there has been one group of Hawaiian bones that has been returned to a community group that requested them. So far, relations are good, and discussions are continuing. I don't see any problem with the museum. They have been very cooperative.

Senator **McCain**. Good.

Jerry, is it appropriate for the Congress to define "sacred" in the legislation before us today, or should that be left up to the tribes themselves, in your view?

Mr. **Flute**. I think that is an interpretation that is best left to the tribes because every tribe has different ceremoneys. Things are sacred with one tribe but not with another. I think that has to be a tribal definition.

Senator **McCain**. What if we used Webster's definition?

Mr. **Flute**. What does Webster say? [Laughter.]

Senator **McCain**. It comes from the staff. [Laughter.]

I have a tendency to agree, Jerry, that that would be almost impossible, to provide a legislative definition.

Do you agree, Suzan?

Ms. **Harjo**. Absolutely.

Ms. **Mai'oho**. Senator, may I say something?

Senator **McCain**. Yes.

Ms. **Mai'oho**. I just want to say that the area that I am at is considered sacred and hallowed grounds. So I think when you hear about having a particular burial site that may be of Chiefs, or maybe even of any kind of bones, I would say that would be sacred to me. I know where I live is sacred and hallowed.

Senator **McCain**. Lydia, I wasn't frankly as concerned about human remains as I was of some of the associated artifacts. I don't know how anybody could argue about the actual remains, but there are artifacts that maybe to non-Indians represent absolutely nothing but that mean a great deal to a particular tribe.

Ms. **Harjo**. Sacredness is always defined by the practitioners and the religious leaders. It is self-identification. There is no other religion that would have anything identified for it as to its sacred nature, as to a degree, even, outside itself. It is all self-identification and must be so here.

Senator **McCain**. Jerry, thank you for all your hard work. We are very appreciative of the particular place you hold in helping Native Americans, and we are very grateful for that. You provide us with a refreshing and different perspective than we usually get. We look forward to seeing you here many times in the future.

Mr. **Flute**. Thank you.

Senator **McCain**. Suzan, as always, we are grateful for your presence.

Clarence and Lydia, I know you came a very long way. I know that one of the most onerous tasks that faces me is to come out to Hawaii at the end of the month. [Laughter.]

I'm sure you can appreciate the sacrifice that I'll be making in order to do that. [Laughter.]

I look forward to seeing you out there.

Thank you all for being here today. This hearing is adjourned.

[Whereupon, at 5:25 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

STATEMENT BY THE AMERICAN ASSOCIATION OF MUSEUMS TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON LEGAL ISSUES RELATING TO PROPOSED SUBSTITUTE LEGISLATION S. 1980

INTRODUCTION

The findings incorporated in proposed substitute legislation S. 1980 appropriately state that "the disposition and treatment of Native American human remains, funerary objects, sacred objects and items of cultural patrimony should be governed by respect for the human rights of Native peoples and for the values of scientific research and public education." Sec. 2(7). This finding is wholly consistent with the mission of public museums. Public museums exist for the benefit of the public. The scientific research that is sponsored by museums is performed as a component to its primary mission: public education and enlightenment. Museums recognize that its duties to the public are not advanced by sacrificing respect for the human rights of Native peoples.

Proposed substitute legislation S. 1980 attempts to provide a process through which Native Americans and Native American groups may obtain the human remains of their ancestors, as well as related funerary objects, and certain Native American religious and cultural objects. However, in its present form, the proposed legislation is extremely broad in its application and gives rise to a number of difficult federal and state law issues. This memorandum is offered by the American Association of Museums ("AAM") for the purpose of discussing relevant laws that are presently in existence and the difficulties that will arise if the proposed legislation is enacted in its present form. The

AAM stands ready to supplement this statement with any additional data or analysis that the Senate Select Committee on Indian Affairs may request.

PROCEDURES PRESENTLY IN EXISTENCE TO PREVENT IMPROPER DISTURBANCE AND REMOVAL OF HUMAN REMAINS AND OBJECTS, AND TO FACILITATE REQUESTS FOR REPATRIATION

At the present time, a growing number of museums have implemented internal procedures through which requests made by Native Americans and Native American groups may be addressed. For example, the Field Museum of Natural History in Chicago has instituted a program for the purpose of reviewing any and all requests for repatriation of human remains, funerary goods, and religious and cultural objects in its collection. Under this policy, the Field Museum provides open and full access to its records and storage space to all interested parties. Substantively, this policy provides for the repatriation of human remains and associated grave objects to biologically and/or culturally related descendant groups for the purpose of reconsecrating those remains and grave objects in accordance with traditional practices. The Field Museum's policy also addresses requests for sacred objects currently needed for the practice of a Native American religion. In the event that the Field Museum and the Native American group cannot resolve issues arising from the request for repatriation, the Field Museum's policy specifically provides that the Museum will submit the unresolved issues to an impartial third party as authorized under state law.

The benefits that accompany an internal policy similar to the Field Museum's policy are great in that it acknowledges and respects Native Americans' human rights, it fosters greater communication and sharing of information, and it involves minimal cost. Even where museums have yet to adopt such internal policies, the same benefits may be obtained through arbitration under state law. Presently, an overwhelming majority of the states of this nation have codified a version of the Uniform Arbitration Act.

Additionally, every state in the Union has enacted legislation regulating dead bodies and/or cemeteries. Many states have also enacted specific laws that protect non-traditional cemeteries.[1] The most recent examples of this type of legislation have occurred in Nebraska, Kansas, and Colorado.[2] Finally, a growing number of states have enacted or are in the process of enacting statutes expressly aimed at protecting Native American burial sites.[3]

There has also been a considerable amount of federal legislation enacted during this century that affects the disposition and treatment of Native American human remains, funerary goods, and religious and cultural objects. These laws reflect a national policy that supports preservation and which has demonstrated great respect for Native American cultures. The most prominent of these laws is the Archeological Resources Protection Act of 1979 ("Act"). 16 U.S.C. §§ 470aa-470ll (1982).[4] The Act was created, in part, to correct the infirmities of the Antiquities Act of 1906. 16 U.S.C. § 433 (1982). The Act provides for greater involvement and control by Native Americans in determining the propriety and scope of any permits to explore archeological sites. See, e.g., 16 U.S.C. § 470cc(g). The Act represents a shift of control from purely "academic expertise" to an emphasis on "aboriginal ancestry." Wilson & Zingg, What Is America's Heritage? Historic Preservation and American Indian Culture, 22 U. Kan. L. Rev. 413, 426 (1972). The Act also provides for stiff penalties for violations of its provisions. 16 U.S.C. § 470cc(d).

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[1] *See, e.g.*, Fla. Stat. Ann. § 872.05 (1989); Mass. Gen. L. ch. 7, § 38A; ch. 9, §§ 26A, 27C; ch. 38, § 6B; ch. 114, § 17 (1986); Minn. Stat. Ann. § 307.08 (Supp. 1989); Mo. Stat. Ann. §§ 194.400 et seq. (Vernon Supp. 1989); N.C. Gen. Stat. §§ 70-26 et seq. (1985 & Supp. 1987); N.H. Rev. Stat. Ann. §§ 227-C:8 et seq. (Supp. 1988).

[2] *See* Unmarked Human Burial Sites Preservation Act, §§ 12-1201 et seq.; Kansas Unmarked Burial Sites Preservation Act, §§ 75-2741 et seq.; Unmarked Human Graves, §§ 24-80-1301 et seq.

[3] *See, e.g.*, Ala. Code §§ 41-3-1 et seq. (1982); Conn. Gen. Stat. Ann. §§ 47-66e *et seq.* (1986); Del. Code Ann. art. 7, §§ 5301 et seq. (1983); Idaho Code §§ 27-501 et seq. (Supp. 1989); Ill. Ann. Stat. ch. 127, para. 133cl (1981); Okla. Stat. Ann. tit. 21, § 1168; tit. 53, § 361 (1987); Wash. Rev. Code Ann. §§ 68.04.010 (1985 & Supp. 1989).

[4] This statute properly recognizes that "archeological resources are diminishing resources in this nation today. Because of this, and because . . . archeological resources are finite and non-refineable, the objective should be to (footnote continued)

Furthermore, it is presently illegal under federal law to improperly remove Native American human remains and Native American religious and cultural objects. 18 U.S.C. § 1163 (1982). See Cheyenne-Arapaho Tribe of Oklahoma v. Beard, 554 F. Supp. 1, 4 (W.D. Okla. 1980). These are just a few examples of federal legislation enacted to protect Native American human remains and objects associated with Native American groups.[5]

The state and federal laws, as well as the institutional programs that have been and are currently being implemented by public museums, are significant and therefore must be kept in mind when addressing the issue of repatriation. These laws provide a body of law that is in existence and that

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manage these resources for their long-term conservation while at the same time allowing the necessary consumption of them in the interest of advancing knowledge and the past or to illustrate or interpret to the public' and . . . the human history of this nation." 1978 U.S. Code Cong. and Admin. News at 1722.

[5] See also National Historic Preservation Act of 1966, 16 U.S.C. §§ 463, 470; Reservoir Salvage Act of 1960, 16 U.S.C. § 469 a-3(b); National Environmental Protection Act of 1969, 42 U.S.C. § 4331(b)(4); Department of Transportation Act, 23 U.S.C. § 138 and 49 U.S.C. § 303 (1982 & Supp. 1985).

may be examined, amended and/or refined to reach solutions to these difficult problems.

PROPOSED SUBSTITUTE LEGISLATION S. 1980

Public museums concur with the basic purposes that have inspired proposed substitute legislation S. 1980. All items associated with Native American cultures must be treated with the utmost respect. Issues relating to the disposition and treatment of Native American human remains and religious and cultural objects that play a vital role in living Native American cultures must be addressed in the most sensitive and equitable manner possible. However, proposed substitute legislation S. 1980 exceeds the scope of these purposes. As the following discussion reflects, the terms of S. 1980 are extremely broad and are fraught with problems and potential difficulties that may, in practice, prove to be counterproductive to the intended purposes of the proposed substitute legislation.

A. "Native American Cultural Patrimony" Must Be Defined With Greater Clarity.

The definition of "Native American cultural patrimony"[6] gives rise to serious difficulties because of its breadth: "An item having historical, traditional or cultural importance to the Native American group or culture which is associated with the Native American group itself, rather than property owned by any individual Native American, and which, therefore, cannot be legally alienated, appropriated or conveyed by any individual Native American regardless of whether or not the individual is a member of the Native American group." Sec. 3(13). This definition is so broad that it encompasses any and all elements of a culture, thus making it difficult to discern what is not "cultural patrimony."7/

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[6] The proposed legislation provides separate definitions for "sacred objects" and "cultural patrimony." The term "Native American sacred object" refers to an object "which is, or has been, devoted to a Native American religious ceremony or which is or has been employed in observance of such religious ceremony." Sec. 3(12). Perhaps a more appropriate definition would simply describe those objects that are actively employed at the present time for the religious or ceremonial purposes for which they were created. Merryman, *The Retention of Cultural Property*, 21 U.C. Davis L. Rev. 477, 497 (1988).

B. Practical Difficulties In Performing Requisite Inventory and Investigation.

Section 5(a)(1) requires each museum "that has possession or control over holdings or collections of Native American sacred objects or items of Native American cultural patrimony, including Native American human remains and funerary objects shall compile an inventory of such remains and objects in its possession or control and, to the fullest extent possible, identify the geographic and cultural affiliation of such remains and objects." (Emphasis added). Section 5(a)(2)(C) provides that the identification of human remains and objects "shall be based upon the best available scientific and historical documentation." (Emphasis added). This entire process is to be completed within five years of the date upon which this legislation is enacted. Sec. 5(a)(2)(B).8/ Thereafter, if the identification process:

7/ Rather than clarifying the meaning of "Native American cultural patrimony", a literal reading of the definition's reference to common or communal property confuses the issue and may in fact alter preexisting substantive property rights. Section 3(13) could be read to mean that any "item having historical, traditional or cultural importance to the Native American group or culture which is associated with the Native American group itself" cannot be owned by any individual Native American and cannot be legally alienated. This would unquestionably be a change in the law that constitutes a taking under the Fifth Amendment and would therefore require just compensation. See infra. Furthermore, this provision could set a precedent that would have a far reaching and otherwise unintended impact on other preexisting property rights arising from state law.

8/ It must be recognized that museums may be granted an extension of these time requirements obtained upon showing "a good faith effort to carry out an (footnote continued)

> has established by a preponderance of the evidence the Native American cultural affiliation of any particular Native American human remains or funerary objects, Native American sacred objects, or items of Native American cultural patrimony, the Federal agency or museum shall, by no later than 6 months after the completion of the inventory, cause the Native American group to be notified on such identification.

Sec. 5(a)(3). (Emphasis added).

The burden placed on museums by the provisions in Section 5 are overwhelming. First, the requirements that museums identify all remains and objects to the "fullest extent possible" and based upon the "best available" scientific and historical data, while ambiguous, imply extremely high standards. Compliance with these standards would entail massive amounts of time and money. Even if these resources were available, there is serious doubt as to whether there are presently enough physical anthropologists and other qualified scientists necessary to complete such a project within five years.

Second, identification by a "preponderance of the evidence" would necessarily entail every single object in the museums' collections. If under the proposed legislation proof by a preponderance of the evidence means proof that it is more likely than not that the remains and objects are identified or associated with a particular Native American group rather than no particular Native American group, then any evidence whatsoever, no matter how uncertain or slight, would be sufficient to establish by a preponderance of the evidence of cultural affiliation with some Native American group.

Third, the legislation requires that museums notify the "affected Native American group." In essence, the legislation requires the museums to conduct

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inventory and identification" process. Sec. 5(a)(7). The AAM would encourage the Committee to view efforts by museums to establish an internal policy for processing requests for repatriation such as the procedure implemented by the Field Museum, see supra, as constituting "good faith" efforts as the term is used in the proposed substitute legislation.

an investigation that is exhaustive enough to identify a single group as having the greatest cultural affiliation at the exclusion of all other potentially affected Native American groups. In addition to the overwhelming expenditures of resources in an investigation necessary to obtain such a degree of certainty, museums would at best be subjected to criticism by and suffer the deterioration of relationships with dissatisfied Native American groups, and at worst be exposed to legal liability for errors made in deciding which single Native American group in existence today is the most closely affiliated to the human remains or object in question.

Public institutions such as the museums that are subject to the proposed legislation are held to certain fiduciary duties. These duties require the museums to, in part, preserve and maintain its collections in a way that best allows them to fulfill their mission to serve and educate the public. See e.g., Rowan v. Pasadena Art Museum, No. C-32287 at 6 (Cal. Sup. Ct. September 22, 1981); Illinois v. Silverstein, 408 N.E.2d 243 (Ill. Ct. App. 1980); Lefkowitz v. The Museum of the American Indian, No. 41416175 (N.Y. Sup. Ct. June 27, 1975). The matter of legal title involves difficult and complex issues. See Infra. Unless and until these issues are decided in specific situations, public museums that perform deaccession activities do so at the risk of violating their duties as fiduciaries.

Where requests for human remains, funerary goods, and religious or cultural objects are made, public museums must take care to determine that the party who takes possession or control of the human remains or objects has a superior right to said possession or control. First, the museum's fiduciary duty to the public militates against the depletion of its collections. M. Malaso, A Legal Primer on Managing Museum Collections 13-18 (1985). It is incorrect to conclude that there is no such duty where the museum does not have superior legal title to all other parties. Such a position would permit indiscriminate deaccession. The museum's duty is instead to grant the request only where the party making the request demonstrates a superior interest. Second, indiscriminate deaccession of objects may result in the museum's liability to parties who have a greater interest in the particular object than the party who authored the initial request.

Absent the request by a proper party, the museum has both a property right which it must exercise in a manner consistent with its fiduciary duty as a public institution and a quasi-property right as a trustee or gratuitous bailor that it holds to protect the rights of the most interested parties and therefore authorizes its possession and control of the object in question. Deaccession of human remains or objects to parties who do not have a superior interest would violate these duties.

C. Difficult and Complex Issue of Determining "Legal Title" Must Be Dealt With Carefully In Each Case.

Section 5(c)(1) provides that upon request of any Native American or Native American group to obtain any Native American human remains, funerary objects, sacred objects, or "cultural patrimony", the museum that has possession and/or control of said remains or objects must "prove by a preponderance of the evidence" that it has "legal title to the remains or objects." (Emphasis added). As incorporated in the legislation, proof of "legal title" presents a number of very difficult questions. First, it is unclear whether the statute requires museums to prove its superior legal title as to the particular Native American or Native American group, or whether the museum must go further and prove legal title as to all other potential claims and persons regardless of whether they are participating in the process. If in fact the statute calls for the latter proof, there is a serious question as to whether legal title of that sort can be properly ascertained when all of the potential claimants are not available to contest the museum's contention of legal title.

Second, proof of title presupposes the choice of the applicable body of law. As the definition of "cultural patrimony" indicates, Native Americans may very well argue that proof of legal title should be evaluated in accordance with tribal law and customs. On the other hand, there are many circumstances in which the object in question has been the subject of a lawful commercial transaction sanctioned by state law and should therefore be reviewed in accordance with legal principles established under the relevant state's law. Additionally, federal Indian law must also be considered in large number of cases.

Third, and finally, there are certain basic fact finding issues that must be decided which include determination of the event or the particular conduct which should be considered in evaluating legal title. Alternatively, there will be issues of intent that must be decided if there is some question as to whether an object is lost or abandoned. The proposed substitute legislation provides no guidance on how these very complicated factual issues will be handled.

The determination of "legal title" can be a very difficult and complicated matter. In reviewing the issue of legal title and the associated rights to control and/or possession of a particular object, there are at least three primary issues that must be considered: (1) the type of object in question; (2) the relevant transactions and/or events that led to the object's current disposition; and (3) whether there are any relevant real property rights that may affect title. All three of these issues become interrelated in any given analysis.

Human remains and funerary objects must be dealt with in a very different manner than religious and cultural objects. According to common law, no one has a personal property right in a dead body. Cadaver nullicas in bonis. At best, individuals who have a sufficiently close legal relationship, either as a blood relative or as an appointed trustee, may assert a quasi-property right to take possession of a deceased person's remains for the exclusive purpose or internment or reinterment of those remains. See, e.g., Strachan v. John F. Kennedy Memorial Hosp., 507 A.2d 718 (N.J. Super. 1986); McCoy v. Georgia Baptist Hosp., 306 S.E.2d 746 (Ga. Ct. App. 1983); Sullivan v. Catholic Cemeteries, Inc., 317 A.2d 430 (R.I. 1974). It must be pointed out that where this common law principle is applied, there is also the additional and very difficult issue of whether state law or tribal law will be used in the determination of which party should be entrusted with the remains. See, e.g., Mexican v. Circle Bear, 370 N.W.2d 737, 741-42 (S.D. 1985).

This, however, is not to say that museums have no right to maintain human remains in their collections. At the very least, museums have a quasi-property right and a corresponding duty to hold the remains in trust awaiting a claim by a proper party who will take possession for the purpose of interment. The museum would breach that duty by relinquishing control and possession to any party besides blood relatives or otherwise properly designated trustees.

The law is similar with respect to funerary objects. In those situations where there is a determination that the item is a funerary object, then that object cannot be the subject of personal property by any person. The trustee relationship that applies to dead bodies logically extends to funerary objects as well. Therefore, biological descendents may have a quasi-property right to take possession of funerary objects for the limited purpose of reinterment.[9] In the absence of such a request, museums must retain the object as a trustee and may not relinquish it except to a blood relative or some other proper trustee.

In contravention with these well established common law standards, the proposed substitute legislation permits "heirs", through express written consent, "to sell, use for profit, or transport for sale or profit" the remains and funerary objects of a particular Native American. Sec. 4(d)(1)(A). Moreover, this provision is inconsistent with the concerns expressed by Native Americans, and it is at odds with the objectives of public museums in addressing this problem: to maintain the greatest respect for Native Americans and their cultures while performing the museum's duties to the general public.

Religious and cultural objects are more likely to be viewed as items in which private parties may hold personal property interests. Therefore, it becomes necessary to examine the manner in which these objects became part of the museums' collections. For instance, if the object was obtained through a commercial transaction, it will be necessary to identify the date and circumstances of that transaction. It will be further necessary, to determine the body of law--Native American, federal, or state--that would apply in evaluating the validity of such a transaction. It would be appropriate to examine the contract and property laws of the state where the transaction took place, as those laws existed at the time of the particular transaction. Any such analysis would require a review of the relevant Native American laws and customs to address the very complicated issue of whether at the time of the transaction the seller was capable of transferring legal title of the object. See generally Beaglehole, Ownership and Inheritance in an American Indian Tribe, 20 Iowa L. Rev. 304 (1934); Knoepfler, Legal Status of the American Indian and His Property, 7 Iowa L. Rev. 232 (1922). Thus, while personal property rights may attach to these religious and cultural objects, the determination of those rights in any given case involves extensive factual investigation and complicated issues of Native American, federal, and state law.

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[9] For example, in Charrier v. Bell, 496 So.2d 601 (La. Ct. App. 1986), the Court held that "[t]he intent in interring objects with the deceased is that they will remain there perpetually, and not that they are available for someone to recover and possess as owner." Id. at 605. The objects in question were therefore entrusted with the Native American group for the purpose of proper reinterment.

If the object was discovered as part of an excavation, it may become necessary to determine whether the object was found on or in federal land, land held in trust for Native Americans, or land owned in fee by private parties. The United States may have a superior claim for ownership of objects excavated from federal property. Moreover, there is significant federal legislation which has been enacted to regulate archeological activities on federal lands. See supra. There is some question as to the federal government's priority in circumstances in which it is acting as a trustee. However, where the objects are found on or excavated from private property, state property law is likely to control the issue of which party has the greatest personal property interest in the object. Without a doubt, the owner of the property on or in which the object in question was discovered has some interest. Under common law, it is also relevant to determine whether the object in question was lost or abandoned. Abandoned property may belong to the finder. Generally, the finder also has a superior interest in lost property to other persons except the true owner for whom the finder acts as a gratuitous bailor. R. Brown, The Law of Personal Property 25-26 (2d. ed. 1955).

The preceding discussion of relevant legal issues is by no means comprehensive or definitive. Each situation presents its own unique and difficult factual and legal problems. The point is simply to review ways in which these issues may be analyzed under existing law and to illustrate the importance of evaluating property claims relating to human remains and Native American objects in a case by case manner. This point is particularly important in light of the fact that the proposed substitute legislation permits the person or entity who hold "legal title" to "sacred objects or objects of Native American cultural patrimony" to "sell, use for profit, or transport for sale or profit" those objects. Sec. 4(d)(1)(B). If legal title is recognized in a party who has no legal, professional, or tribal responsibilities or duties to the public, then the object in question may be lost forever to the American public, to be retained instead for private benefit.

D. Transfer of Right to Control and Possession of Human Remains and Cultural Objects Must Only Be Made To Proper Party or Parties.

Assuming that these very difficult and complicated factual and legal issues relating to title were fully and fairly resolved, and in the event museums were unable to demonstrate that they have legal title to a particular object, Section 5(c)(2) places the burden upon the Native American or Native American group "to prove by a preponderance of the evidence" that either (1) the remains or funerary objects are those of an "ancestor" or of one "cultural affiliated" with the Native American group or (2) that the Native American group once "owned or possessed" the object or objects in question. If the Native American or Native American group satisfies their burden of proof, then "the museum shall expeditiously return the remains or objects." Sec. 3(c)(3). As with the museums' standard of proof, there are a number of difficulties that arise out of the Native Americans' burden to prove an ancestral relationship, a cultural affiliation, or previous ownership or possession. The burden is very slight and focuses only on the particular individual or group's relationship to the object, as opposed to the superiority of the particular individual or group's interest as against other individuals or groups. See supra. When control and possession of these remains and objects is surrendered, it is essential that such surrender be to the proper party. However, this provision in the proposed legislation would permit the transfer of possession and control of human remains and cultural objects to persons who may only have some, but not necessarily the strongest or closest, relationship to the remains or object.[10/] Further, this provision also fails to provide guidance on the application of legal standards that shall be used to determine previous "ownership." See supra. Finally, the legislation does not provide for the ordering or prioritization of rights among individuals who have an ancestral

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[10/] It is noted that the proposed legislation authorizes a Review Committee to arbitrate disputes between Native American groups relating to the return of such remains or objects. Sec. 6(a)(3)(c). However, this provision presupposes involvement of all interested parties and proper adjudication of legal title issues. Because of the short time frame allowed for the identification process and the statutory burden on museums to determine and notify the single Native American group that appears to be most closely related or that has the strongest interest, the legislation militates against notice and participation of all interested parties. It is not sufficient to argue that publication of notice in the Federal Register, as provided for in Section 5(a)(6), will suffice to provide all interested Native Americans with adequate notification. Moreover, the arbitration subsection does not contemplate the mediation of competing claims made by Native Americans as opposed to Native American groups.

relationship, cultural affiliation, and/or previous ownership or possession over the object in question.[11]

E. Review Committee That Adjudicates Private Rights Must Be Impartial and Subject to Proper Judicial Review.

The legislation provides that the Secretary of Interior "shall establish a committee to monitor and review implementation of the inventory and identification process and restoration activities" that are required by Section 5. The establishment and operation of the Review Committee gives rise to a number of serious constitutional problems.

First, as stated previously, determination of legal title involves a great deal more than mere findings of fact. The Review Committee will adjudicate the issue of legal title. This will necessarily involve choosing the applicable legal standards and applying those standards. As stated previously, there are many rights and duties that rise from state law that have a direct bearing on the issue of legal title. Therefore, this Article I forum shall be performing adjudicatory functions that are reserved exclusively for Article III courts.

Article I courts of special jurisdiction created by Congress cannot be given the plenary powers of Article III courts. In re United Missouri Bank of Kansas City, N.A., No. 89-2981 at 4 (8th Cir. April 23, 1990). On the contrary, said tribunals or commissions are severely limited by the jurisdiction defined in the enabling legislation and generally to the adjudication of "public rights" (as opposed to "private rights") exclusively:

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[11] The return of skeletal remains, as well as items of personal property, to parties on the sole basis of their cultural affiliation as opposed to biological relation has little or no basis in law. See Corpse Annotation, Removal and Reinterment of Remains, 21 A.L.R. 2d 472, at § 16 (1952 & Supp. 1989); T. Stueve, Mortuary Law 27-35 (7th rev. ed. 1984). Moreover, even if transfer to such parties were legally proper, there must be significant guidance as to transfer of possession and control of these items.

> [There is] a critical difference between rights created by federal statute and rights recognized by the Constitution. Moreover, such a distinction seems to us to be necessary in light of the delicate accommodations required by the principles of separation of powers reflected in Article III. The Constitutional system of checks and balances is designed to guard against "encroachment or aggrandizement" by Congress at the expense of the other branch of government. . . . [W]hen the right being adjudicated is not of Congressional creation. . . . substantial inroads into functions that have been traditionally performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it has created. Rather, such a route would suggest unwarranted encroachments upon the judicial power of the United States, which the Constitution reserves for Article III courts.

Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50, 83-84 (1982). The adjudication of rights and responsibilities arising from state law involve the adjudication of "private rights" and therefore require adjudication by an Article III court.

Second, Section 6(a)(2) provides that the Review Committee shall be composed of seven members, "four of whom shall be appointed from nominations submitted by Indian tribes." In essence, the Committee will have an inherent bias in favor of one of the groups that will come before it for adjudication of, among other things, the parties' property rights. "[T]here are certain fundamentals of just procedure which are the same for every type of tribunal and every type of proceeding." R. Pound, Administrative Law, 75 (1942). "[A] 'fair trial in a fair tribunal is a basic requirement of due process.'" Id. at 47. See also Commodity Futures Trading Commission v. Schor, 106 S.Ct. 3245, 3256 (1986) (Article III guarantees impartial and independent adjudication); In Re Murchison, 349 U.S. 133, 136 (1955). The requirement of fair and unbiased tribunals applies to administrative agencies which adjudicate as well as to courts. Sussel v. Honolulu Civil Service Commission, 784 P.2d 867, 870-71 (Haw. 1989). In short, "the participation of an 'independent adjudicator' should be a fundamental requirement in all due process cases." In

Re Promulgation of Guardianship Services Regulations, 512 A.2d 453, 460 (N.J. 1986). See also Redish & Marshall, Adjudicatory Independence and the Values of Procedural Due Process, 95 Yale L.J. 455, 475-76 (1986). At the very least, the Review Committee must be impartial and free from bias favoring or disfavoring any of the parties that come before it.[12]

Third, and finally, the proposed legislation fails to provide for adequate and meaningful judicial review of the Review Committee's decisions. Section 8 of the legislation states that "the United States District Court shall have jurisdiction over any action brought by the heir of a Native American or a Native American group alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act." (Emphasis added). At best, this provision makes available a very limited form of judicial review available exclusively to the heirs of Native Americans or Native American groups. All other parties whose rights are adjudicated by the Review Committee are denied this same right to review and are therefore left unprotected from bias and other due process violations.

F. The Nature of Scientific Study Must Be Recognized.

The importance of scientific study is acknowledged in the findings and elsewhere in the proposed substitute legislation. In so acknowledging the importance of research as it relates to museums' mission to serve the public,[13] it is very important to recognize the nature of scientific research. All research is important and all research is beneficial. Moreover, it is difficult if not impossible to state at any given time the relative importance of any particular study. The important point to recognize is that the more research that is performed and the greater the advances in technology that occur, the more beneficial and valuable archeological resources become. This demonstrates another reason why each request for repatriation must be dealt with carefully and in a case by case manner over time.

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[12] This is a point upon which all parties seem to be in agreement. Walter Echo-Hawk has stated: "To be frank, it is far too easy to envision a 'stacked deck' on the Commission, . . . that would defeat the laudable purposes of the Bill . . . as a matter of policy and principal, fair and equal footing in this matter is extremely important, and should not be departed from." Testimony of Walter R. Echo-Hawk before the Senate and Select Committee on Native Affairs on a Substitute Bill (Amendment No. 2124) For S.187, the "Native American Museum Claims Commission Act" at 24 (July 29, 1988).

G. Proposed Substitute Legislation Improperly Ignores Private Collections and Private Collectors.

The proposed substitute legislation correctly declares that "the disposition and treatment of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony should be governed by respect for the human rights of native peoples and for the values of scientific research and public education." Sec. 2(7). However, the proposed legislation targets public museums that receive federal funding. Sec. 3(16). The legislation, on the other hand, virtually ignores private collections and private collectors. It is the public museum that promotes public education and performs scientific research. Furthermore, it is the public museums that are bound by legal, professional, and ethical duties to the public to preserve and protect archeological resources. Finally, it is the public museums that are instituting internal policies and procedures in an attempt to fairly resolve requests for repatriation of objects associated with Native American cultures. In light of these facts, it seems unreasonable to enact legislation that exclusively targets public museums while altogether ignoring other types of collectors and collections.

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[13] It bears noting that at the hearing on May 14, 1990, Dr. Emery A. Johnson stated that there has been no significant scientific benefit that has resulted from the study of skeletal remains. This statement is wholly incorrect. See Ubelaker & Grant, Human Skeletal Remains: Preservation or Reburial? 32 Y.B. Physical Anthropology 249 (1989); Larsen, Bioarcheology Interpretations of Subsistence Economy and Behavior from Human Skeletal Remains, in 10 Advance in Archeological Method and Theory 339 (1987); Buikstra & Gordon, The Study and Restudy of Human Skeletal Series: The Importance of Long-Term Curation, 376 Annals of the N.Y. Acad. of Sci. 449 (1981).

H. Proposed Substitute Legislation Threatens Unconstitutional Taking Of Property.

The Fifth Amendment states, in part, "the federal government shall not take "private property" for "public use, without just compensation." U.S. Const. amend. 5. Traditionally, courts have "protected property interests where a government action might deprive an individual of an interest, derived from common law, in peaceful possession, or freedom of use." 1 C. Koch, Administrative Law and Practice 540-49 (1985). It does not matter whether "the property was being taken to meet a need of government or for the benefit of another private individual." Id. at 549. "When the government physically takes a person's property or allows someone other than the property owner to have permanent physical occupation of all or part of a definable piece of property, there is virtually a *per se* rule that such action constitutes a taking." J. Nowak, R. Rotunda & J. Young, Constitutional Law 404 (3d ed. 1986). *See also* Andrus v. Allard, 444 U.S. 51, 64-68 (1979) (Supreme Court has inferred that regulations that "compel the surrender" of objects of personal property constitute a taking that requires just compensation).

Insofar as this legislation would require the transfer of objects in a manner inconsistent with and without regard for preexisting legal rights, including most prominently well established and long recognized property rights based on state law, said transfers would result in taking private property without just compensation in violation of the fifth amendment. A prospective change in state property law constitutes a compensable taking. Hughes v. Washington, 389 U.S. 290, 295-97 (1967) (Stewart, J., concurring); Rodic v. Thistledown Racing Club, Inc., 615 F.2d 736, 740 (6th Cir. 1980). The potential for a taking without just compensation under this legislation is very serious despite what appears to be a general disclaimer or savings clause at the end of the proposed draft. Sec. 6(b)(3) & (5).[14]

CONCLUSION

The AAM supports the purpose of the proposed substitute legislation: to develop policies and procedures for the disposition and treatment of Native American human remains, funerary goods, and religious and cultural objects in a manner that is respectful of Native American human rights and the values of scientific research and public education. The AAM and its member institutions are currently working to establish such policies and procedures. However, the AAM believes that the proposed substitute legislation in its present form contains a large number of problems of interpretation and will give rise to, rather than solve, many difficult and complex legal issues.

The American Association of Museums appreciates the need to create new and stronger relationships between museums and Native Americans. It is our desire and intent to help create such relationships and in doing so enable America's museums to exercise leadership, in partnership with Native Americans, in helping shape broad public sensitivity and appreciation of Native Americans and their art and culture.

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[14] The Constitution measures a taking of property not on what the legislature "says, or by what it intends, but by what it does." Hughes, 389 U.S. at 298 (emphasis original). The proposed substitute legislation may very well alter traditional and state law concepts of "legal title." Moreover, by creating a process in which issues of legal title and rights arising out of state law, as well as other sources, are adjudicated by a non-Article III court which is neither impartial nor independent in its composition and deprives museums of the right to judicial review of adverse decisions, the legislation clearly results in the "taking or transferring of legal title, or legal rights" of museums.

We urge the Committee to consider the practical and legal issues we have brought forward here and in other testimony, and we look forward to working closely with the Committee and all concerned parties as these deliberations proceed.

American
Association
of
Museums

June 5, 1990

The Honorable John McCain, Vice-Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator McCain:

Attached is a statement we have submitted for the record regarding the issue of repatriation of Native American remains, funerary objects and cultural patrimony and specifically the proposed amendment to S. 1980. This statement is intended to be in addition to and complementary with the AAM testimony of May 14, 1990 delivered by Thomas A. Livesay.

In that testimony we noted that (p. 14) "the AAM intends to submit to the committee a more in depth delineation of the legal issues that are of concern to museums on this issue." The attached statement is in fulfilment of that intention.

As we have said in our testimony and this statement, we stand ready to work with you, members of the committee and staff, and all interested parties in seeking solutions to this critical issue.

Yours sincerely,

Ed Able

Edward H. Able, Jr., CAE
Executive Director

cc: Executive Committee
Government Affairs Committee
Geoffrey Platt Jr., Director of Government Affairs, AAM

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TESTIMONY BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
THE UNITED STATES SENATE

By Paul Bender

Facilitator, Panel for a National Dialogue on Museum/
Native American Relations

Professor of Law and Former Dean,
Arizona State University College of Law

May 14, 1990

I appreciate the opportunity to appear before the Committee in my role as facilitator for the Panel for a National Dialogue on Museum/Native American Relations. As the Committee knows, this Panel was organized by The Heard Museum's Barry M. Goldwater Center for Cross-Cultural Communication as the result of a suggestion made to the Committee in 1988 by Michael J. Fox, who was then Director of the Museum. After meetings that took place over the course of almost a year, the Panel submitted its Report to the Committee on February 28 of this year.

In this statement I will attempt briefly to summarize the main findings and recommendations of the Dialogue Panel. These findings and recommendations, as well as a description of the Panel's organization, membership and procedures, are set out more fully in the Panel Report, which is appended to my written statement. I urge the Committee to consider the whole of that report -- and especially its recommendations -- very carefully, for it is the product of many hours of serious thought, discussion and give and take among people with strong feelings, great expertise, and quite different viewpoints. The consensus reached within such a Panel on all of the major issues is, I think, enormously immpressive.

Michael Fox was unable to be here today. He has asked me to convey to the Committee his gratitude for permitting the Panel dialogue process to take place and for considering the Panel's recommendations in the legislative process. As a member of the Board of Trustees of The Heard Museum, I would also like to express that institution's appreciation for letting its Goldwater Center play a central role in the development of public policy on this issue. Finally, I know that all of the members of the Panel appreciate and commend the Committee's willingness to give consideration to their collective views.

The Panel dialogue process was, for me, a very positive experience. At the outset, I think that most Panel members thought that the chance of their reaching any significant level of agreement on any of the major issues was, at best, remote. But once preconceptions were put aside, and the Panel members sought to address specific issues through discussion with each other, it turned out that there was, in fact, a great deal of mutual agreement, as well as a great deal of willingness to learn from and accommodate to other points of view. The Panel, it turned out, had, for some members, provided the first occasion during which true dialogue had taken place among tribal leaders and tribal representatives, on the one hand, and museum professionals and archaelogists, on the other. With a few prominent exceptions, the history of the repatriation issue in the U.S. has been one marked by a distinct lack of communication among the parties, often leading to destructive suspicion and mistrust rather than the kind of cooperation that could strengthen scientific and museum programs, while giving Native Americans the right to participate in discussions relating to materials about which they have a great deal of knowledge and in which they have a deep and compelling interest.

This observation leads me to what I consider to be the Panel's main procedural recommendation--that decisions about the disposition and treatment of sensitive Native American materials in the possession of museums and similiar institutions be made through cooperative discussion among all interested parties, including all interested Native American groups. The views, information, and expertise of Native American tribal groups should play an essential role in discussions about whether museums should acquire such materials; about how, if at all, they should display them; about what, if any, scientific examination is appropiate and for what purposes; and about whether materials should be reburied or repatriated and, if so, in what manner and under what conditions. The dialogue and shared responsibility that will result from this cooperative decisional process will not only remove much of the resentment that has built up around these issues for many years, but will, I think, lead to museums and science that are vastly more informed and almost infinitely more valuable.

I was therefore pleased to see provisions in the current draft of S.1980 that call for the preparation of inventories through consultation with Native American representatives and for notification of Native American groups regarding material with which they have a cultural affiliation. I think it might be wise, however, to consider adding further provisions requiring consultation and joint decision-making at all stages of the decisional process. For example, where a request for repatriation is made, it might be useful to provide that all interested Native

American groups be involved from the outset in discussions and decisions about whether a particular group or groups have cultural affinity with the materials, about whether the museum's means of acquisition of the materials was sufficient to give it "title" (if that is to be a relevant criterion), about whether the materials are "indispensable" to proposed scientific studies, about the benefits to be expected from such studies, etc. Such discussions may, more often than not, result in agreement between all concerned about how to treat the materials involved, with no necessity for any formal adversarial claims.

I have attached to my statement a draft of a bill now pending before the Arizona Legislature that makes provision, from the outset, for this kind of cooperative decision-making where sensitive materials are concerned. In that bill the Director of the State Museum is charged with facilitating the discussion process. Perhaps a member of the Review Committee established by Section 6 of the current draft of S.1980 could play a similar role where federal agencies or federally funded museums are involved.

The central substantive recommendation made by the Dialogue Panel is what might be characterized as a principle of tribal determination of the disposition of culturally affiliated materials. Thus, the Panel believes that interested tribal groups should not only have a full partnership role in decision-making with regard to sensitive materials, but that, when materials are culturally affiliated with a particular tribal group, that group's wishes regarding the disposition of the materials must be followed if agreement cannot be reached through mutual discussion. (Two members of the Panel, while disagreeing with the formal principle of tribal control, nevertheless agree that "Indian groups should be given full opportunity to present their concerns and otherwise be included in the decision-making process.")

In the Panel's view, this recommendation follows from recognition of the fact that the disposition of Native American skeletal remains, funerary objects, religious materials and items of national or cultural patrimony is a human rights issue. To put it bluntly (but nevertheless accurately in almost all situations) museums and similar institutions would not now have possession of most of these materials if Native Americans had been accorded full citizenship rights, full rights of equal protection and full and equal human respect during the period of America's dynamic expansion across the continent. The retention by museums, against a tribe's will, of sensitive materials that are part of the tribe's heritage or religion, and that were taken from that tribe without its freely given consent, constitutes not only a bitter reminder, but also a contemporary perpetuation, of acts of discrimination and injustice. It is also relevant, I think, that current ethical standards would not today permit a museum to acquire tribal materials that had been taken from a tribe without its freely given affirmative consent.

The Panel's recommendations, therefore, are in agreement with the general thrust of the current draft of S.1980, which is to give culturally affiliated groups the right to require the repatriation of sensitive materials and to make this right judicially enforcible. The Panel Report, however, suggests at least three related points that may be worth some additional consideration by the Committee:

1. Full repatriation should not be the only available option for a tribal group seeking a role in decisions about culturally affiliated materials. The cooperative discussion process envisioned above, for obtaining agreement among all concerned regarding the disposition of sensitive materials, might well consider solutions involving some form of shared responsibility, such as physical retention by the museum under conditions relating to treatment and display, or physical possession by the tribe with access to researchers for scientific work.

2. One part of the current draft of S.1980 seems to permit a federal agency or museum to retain materials, even when they are culturally affiliated with a tribe that seeks repatriation, if the museum or agency can prove "legal title" to the materials. The concept of "legal title" seems nowhere to be defined in the current draft.

   I do not have trouble with this concept if "legal title" means that the materials were originally obtained from the tribe with the voluntary consent of an individual or group that had authority to alienate them. Without incorporation of such a definition, however, "legal title" may end up being defined in accordance with the law of the state where the materials are located. This, I think, would be unfortunate, not only because of the lack of uniformity that would result (on a subject that calls for a consistent national policy), but also because state "title" concepts might result in some places in the frustration of many or even most legitimate repatriation requests.

   (I might say that I do not here share Dr. Boyd's concern that a failure to abide by state property law in this legislation will amount somehow to an ex post facto taking from museums. The constitutional ex post facto doctrine, of course, applies only to legislation creating new crimes or otherwise imposing penal sanctions. S.1980 would do no such thing. I am also extremely skeptical about whether private "property" can ever be acquired in human remains, associated funerary objects, ceremonial religious objects or items of national patrimony, which are the only materials covered by the draft legislation. Also, even if the acquisition of such rights-- against the will of an affiliated individua or group-- were somehow theoretically possible, the proposed legislation would not, in any event, require return by a museum, but would only be a condition of federal funding; an institution that felt itself compelled by state law to retain such material could reject federal funding or, alternatively, seek a change in state law that would permit it to accept such funding. If a deed of gift purported to compel a museum to practice racial discrimination or segregation, that deed would today be ignored or legally changed, rather than obeyed. The same approach ought to be feasible with regard to deeds of inalienable material originally acquired from Native American groups without their consent).

3. Finally, I am troubled by the proposed exception for materials that "are indispensable for the completion of a specific scientific study, the outcome of which would be a major benefit to the United States." At the very least, I would think that some time limit should be put on the length of any such study; I am painfully aware that academic studies tend to take at least as long as the time that is made available for them. A one or at most two-year time limit, with the possibility of applying for an extension of time when absolutely necessary, would seem to me to be more appropiate than an open-ended provision. Second, as I've indicated above, proposed scientific studies should not initially be decided upon unilaterally by the institution in possession of the materials, but should be discussed with interested tribal groups, whose valuable input and consent should be sought. Finally, if such consent is not forthcomming after full discussion, I wonder whether a scientific study, against an affiliated tribe's expressed will, is morally or legally justified. I strongly believe in the values of science (as, I think, do most tribal officials) but find it difficult to conclude that more weight be given to scientific interests than to important human right concerns.

The most difficult issue for the Dialogue Panel was the treatment of unaffiliated materials,i.e., sensitive materials that are not culturally identified with any present-day tribal group. After much discussion, a majority of the Panel concluded that, where human rights are concerned, the human rights principle requires that a process for finding a decent place of rest for these dead be developed with the cooperation and permission of appropriate Native American groups. (Three dissenting members of the Panel would preserve these remains for scientific study, while according them respectful treatment). I was therefore delighted to see a provision in Section 6(a) (3) (D) of the draft S.1980 that would have the new Review Committee consider and make recommendations about such a reburial process, in consultation with Native American groups. The Dialogue Panel's understanding would be that it would be appropiate for institutions to make proposals for limited scientific study of some of these unaffiliated remains prior to (or even after) reburial, but that Native American consent must be secured for such studies.

On behalf of the Panel, let me thank you again for considering our process and our views. The current draft of S.1980 seems headed in a direction that will properly resolve most aspects of what, unfortunately, has been a divisive issue for too long a period of time. I think I speak for all Panel members in expressing the hope that the passage of this legislation will constitute a landmark in the history of museum - Native American relations. It will, I hope, promote a new tradition of active, productive and fully respectful cooperation (rather than suspicion and mistrust) among scholars, educators and tribal groups. The cornerstone of this new edifice must, I think, be an explicit recognition by all concerned of the right of tribes to participate fully in all decisions relating to sensitive tribally affiliated materials, and of the great benefits that will flow to the public from that participation.

Senate Engrossed

State of Arizona
Senate
Thirty-ninth Legislature
Second Regular Session
1990

SENATE BILL 1412

AN ACT

RELATING TO STATE GOVERNMENT; PRESCRIBING DUTY TO REPORT ARCHAEOLOGICAL, PALEONTOLOGICAL OR HISTORICAL DISCOVERIES; PRESCRIBING DISPOSITION OF DISCOVERIES; PRESCRIBING DEFINITIONS, AND AMENDING SECTION 41-844, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-844, Arizona Revised Statutes, is amended to read:

41-844. Duty to report discoveries; disposition of discoveries

A. A person in charge of any survey, excavation, ~~or~~ construction OR OTHER LIKE ACTIVITY on any lands owned or controlled by this state, by any public agency or institution of the state, or by any county or municipal corporation within the state shall report promptly to the director of the Arizona state museum the existence of any archaeological, paleontological or historical site or object THAT IS AT LEAST FIFTY YEARS OLD AND THAT IS discovered in the course of such survey, excavation, ~~or~~ construction~~,~~ OR OTHER LIKE ACTIVITY and, IN CONSULTATION WITH THE DIRECTOR, shall IMMEDIATELY take all reasonable steps to secure AND MAINTAIN its preservation. IF IT IS NECESSARY TO MOVE THE OBJECT BEFORE COMPLETION OF THE PROCEEDINGS PRESCRIBED BY THIS SECTION TO PERMIT THE CONTINUATION OF WORK ON A CONSTRUCTION PROJECT OR SIMILAR PROJECT, THE DIRECTOR SHALL REQUIRE THAT THE MOVE BE ACCOMPLISHED IN THE MANNER THAT WILL LEAST DISTURB AND BEST PRESERVE THE OBJECT.

B. IF THE OBJECTS DISCOVERED ARE HUMAN REMAINS, FUNERARY OBJECTS, SACRED CEREMONIAL OBJECTS OR OBJECTS OF NATIONAL OR TRIBAL PATRIMONY, THE DIRECTOR OF THE ARIZONA STATE MUSEUM SHALL, TO THE BEST OF HIS ABILITY, GIVE NOTICE OF THE DISCOVERY TO:

1. ALL INDIVIDUALS THAT MAY HAVE A DIRECT KINSHIP RELATIONSHIP TO THE HUMAN REMAINS.
2. ALL GROUPS THAT IT IS REASONABLE TO BELIEVE MAY HAVE A CULTURAL OR RELIGIOUS AFFINITY TO THE REMAINS OR OBJECTS.
3. APPROPRIATE MEMBERS OF THE CURATORIAL STAFF OF THE ARIZONA STATE MUSEUM.

4. FACULTY MEMBERS OF THE STATE UNIVERSITIES WHO HAVE A SIGNIFICANT SCHOLARLY INTEREST IN THE REMAINS OR OBJECTS.

5. THE STATE HISTORIC PRESERVATION OFFICER.

C. AMERICAN INDIAN TRIBAL GOVERNMENTS THAT WISH TO BE NOTIFIED PURSUANT TO THIS SECTION SHALL KEEP ON FILE WITH THE DIRECTOR LISTS OF THE CULTURAL GROUPS AND GEOGRAPHICAL AREA WITH WHICH THEY CLAIM AFFINITY.

D. IF AMERICAN INDIAN HUMAN REMAINS, FUNERARY OBJECTS, SACRED CEREMONIAL OBJECTS OR OBJECTS OF CULTURAL PATRIMONY ARE INVOLVED, THE DIRECTOR, IN ADDITION TO GIVING NOTICE AS REQUIRED IN SUBSECTION B, SHALL GIVE NOTICE TO THE TRIBES THAT OCCUPY OR HAVE OCCUPIED THE LAND ON WHICH THE DISCOVERY IS MADE AND TO THE ARIZONA COMMISSION ON INDIAN AFFAIRS AND THE INTERTRIBAL COUNCIL OF ARIZONA.

E. THE DIRECTOR SHALL RESPOND TO EVERY REPORT OF A DISCOVERY IN A TIMELY FASHION AND WITHIN SIX MONTHS OF BEING NOTIFIED OF THE DISCOVERY, THE DIRECTOR SHALL CONVENE A MEETING OF NOTIFIED PERSONS AND REPRESENTATIVES OF NOTIFIED GROUPS TO DISCUSS THE MOST APPROPRIATE DISPOSITION OF THE DISCOVERED MATERIALS. AT THIS MEETING, THE DIRECTOR SHALL ENCOURAGE AGREEMENT AMONG ALL PARTICIPANTS REGARDING THE MOST APPROPRIATE DISPOSITION AND TREATMENT OF THE MATERIALS. AN AGREEMENT MAY INCLUDE A DECISION TO CURATE OR REBURY MATERIALS SUBJECT TO CONDITIONS OR LIMITATIONS, A DECISION TO ENGAGE IN SCIENTIFIC ANALYSIS BEFORE REPATRIATION OR REBURIAL OR ANY OTHER APPROPRIATE DISPOSITION. IF AN AGREEMENT IS REACHED, IT SHALL DETERMINE THE DISPOSITION AND TREATMENT OF THE MATERIALS AND THE DIRECTOR SHALL OVERSEE ITS IMPLEMENTATION.

F. IF NO AGREEMENT IS REACHED WITHIN SIX MONTHS OF THE MEETING REQUIRED BY SUBSECTION E, THE HUMAN REMAINS OR FUNERARY OBJECTS SHALL BE DISPOSED AND TREATED IN ACCORDANCE WITH THE WISHES OF THE NEAREST RELATIVE WITH A DIRECT KINSHIP RELATIONSHIP, OR WITH THE WISHES OF THE GOVERNING BODY OF THE GROUP WITH CULTURAL OR RELIGIOUS AFFINITY TO THE REMAINS OR OBJECTS IF NO RELATIVE EXISTS. IF SACRED CEREMONIAL OBJECTS OR OBJECTS OF NATIONAL OR TRIBAL PATRIMONY ARE CONCERNED, DISPOSITION AND TREATMENT SHALL BE IN ACCORDANCE WITH THE WISHES OF THE GOVERNING BODY OF THE GROUP WITH CULTURAL OR RELIGIOUS AFFINITY TO THE OBJECTS. THE AUTHORITY TO DETERMINE THE DISPOSITION AND TREATMENT OF REMAINS OR OBJECTS PURSUANT TO THIS SUBSECTION SHALL NOT BE EXERCISED IN A MANNER THAT WOULD PREVENT TIMELY COMPLETION OF A CONSTRUCTION PROJECT OR OTHER PROJECT.

G. IF THERE IS NO PERSON WITH A DIRECT KINSHIP RELATIONSHIP OR A GROUP WITH A CULTURAL OR RELIGIOUS AFFINITY TO HUMAN REMAINS OR FUNERARY OBJECTS AND THE REMAINS HAVE NO SCIENTIFIC VALUE, THE REMAINS OR FUNERARY OBJECTS SHALL REMAIN UNDISTURBED. IF IT IS NECESSARY TO MOVE THEM IN ORDER TO PERMIT COMPLETION OF A CONSTRUCTION OR SIMILAR PROJECT, THE REMAINS OR FUNERARY OBJECTS SHALL BE REBURIED UNDER THE SUPERVISION OF THE DIRECTOR IN A PLACE AS SIMILAR AND CLOSE AS POSSIBLE TO THEIR ORIGINAL BURIAL SITE. IF THE REMAINS OR FUNERARY OBJECTS HAVE SCIENTIFIC VALUE, THEY MAY BE CURATED BY THE ARIZONA STATE MUSEUM OR OTHER AUTHORIZED REPOSITORY FOR A PERIOD OF ONE YEAR, AFTER WHICH THEY SHALL BE REINTERRED. IF REMAINS OF AMERICAN INDIANS ARE INVOLVED, REBURIAL PURSUANT TO THIS SUBSECTION SHALL BE UNDERTAKEN WITH THE COOPERATION OF THE INDIAN TRIBE

LOCATED NEAREST TO THE PLACE WHERE THE REMAINS WERE DISCOVERED. REBURIAL MAY, WITH THAT TRIBE'S CONSENT, TAKE PLACE ON THAT TRIBE'S RESERVATION. THE ONE-YEAR PERIOD FOR SCIENTIFIC CURATION MAY BE EXTENDED WITH THAT TRIBE'S CONSENT. IF THERE IS NO GROUP WITH A CULTURAL OR RELIGIOUS AFFINITY TO SACRED CEREMONIAL OBJECTS OR OBJECTS OF NATIONAL OR TRIBAL PATRIMONY, THE DIRECTOR SHALL DECIDE ON THE MOST APPROPRIATE DISPOSITION AND TREATMENT: WHERE AMERICAN INDIAN MATERIALS ARE INVOLVED, THE DETERMINATION SHALL BE MADE IN CONSULTATION WITH APPROPRIATE TRIBAL REPRESENTATIVES.

H. A REPOSITORY CHARGED WITH THE CARE OR CUSTODY OF HUMAN REMAINS, FUNERARY OBJECTS, SACRED CEREMONIAL OBJECTS OR OBJECTS OF NATIONAL OR TRIBAL PATRIMONY PURSUANT TO THIS SECTION SHALL MAINTAIN THEM WITH APPROPRIATE DIGNITY AND RESPECT AND WITH CONSIDERATION FOR THE SPECIFIC APPLICABLE CULTURAL OR RELIGIOUS TRADITIONS APPLICABLE TO THE REMAINS OR OBJECTS. WHEN MATERIALS ARE RETURNED TO RELATIVES OR AFFILIATED GROUPS, THE RELATIVES OR GROUPS SHALL ACCEPT AND UNDERTAKE RESPONSIBILITY FOR THE PROTECTION AND SECURITY OF THE MATERIALS.

I. THE EXPENSE OF ANY CURATION OR REBURIAL PURSUANT TO THIS SECTION THAT IS REQUIRED AS THE RESULT OF A CONSTRUCTION PROJECT OR SIMILAR PROJECT SHALL BE BORNE BY THAT PROJECT. REBURIALS MADE IN ORDER TO SATISFY THE WISHES OF A RELATIVE OR AFFINAL GROUP SHALL BE BY AND AT THE EXPENSE OF THE RELATIVE OR GROUP.

J. IF A PERSON BELIEVES THAT THE PROVISIONS OF THIS SECTION HAVE NOT BEEN PROPERLY APPLIED HE SHALL GIVE WRITTEN NOTICE OF THIS CLAIM TO ALL OTHER PARTIES ENTITLED TO NOTICE UNDER SUBSECTIONS B AND C. THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS OF RECEIVING THE NOTICE AND ATTEMPT TO AGREE ON THE DESIGNATION OF A THIRD PARTY TO ASSIST IN THE RESOLUTION OF THE DISPUTE. IF THE PARTIES CANNOT AGREE WITHIN FIFTEEN DAYS ON A THIRD PARTY, THE STATE HISTORIC PRESERVATION OFFICER SHALL SERVE IN THAT CAPACITY. THE ADVERSE PARTIES SHALL ATTEMPT TO REACH A RESOLUTION WITH THE ASSISTANCE OF THE THIRD PARTY. IF A RESOLUTION CANNOT BE REACHED WITHIN NINETY DAYS OF THE DESIGNATION OF THE THIRD PARTY, THE THIRD PARTY SHALL RESOLVE THE DISPUTE. EITHER PARTY MAY APPEAL A DECISION WITHIN THIRTY DAYS TO THE SUPERIOR COURT IN THE COUNTY IN WHICH THE SUBJECT OF THE DISPUTE IS LOCATED.

K. IF A WRITTEN REQUEST FOR THE REBURIAL OR REPATRIATION OF HUMAN REMAINS, FUNERARY OBJECTS, SACRED CEREMONIAL OBJECTS OR OBJECTS OF NATIONAL OR TRIBAL PATRIMONY IN THE POSSESSION AND OWNERSHIP OR CONTROL OF AN AGENCY OF THIS STATE, AS OF THE EFFECTIVE DATE OF THIS ACT, IS MADE BY THE GOVERNMENT OF AN AMERICAN INDIAN TRIBE, THE REQUIREMENTS OF THIS SECTION APPLY AS IF THE REMAINS OR OBJECTS HAD BEEN DISCOVERED AFTER THE EFFECTIVE DATE OF THIS ACT.

L. FOR THE PURPOSES OF THIS SECTION:

1. "FUNERARY OBJECT" MEANS AN OBJECT DISCOVERED IN PROXIMITY TO HUMAN REMAINS AND INTENTIONALLY BURIED OR INTERRED WITH THE REMAINS.

2. "GROUP WITH A CULTURAL OR RELIGIOUS AFFINITY" MEANS ANY OF THE FOLLOWING:

(a) IN THE CASE OF HUMAN REMAINS OR FUNERARY OBJECTS, ANY TRIBE THAT HAS SUBMITTED A WRITTEN CLAIM OF AFFINITY PURSUANT TO SUBSECTION C OR ANY OTHER GROUP OR TRIBE THAT HAS CULTURAL AFFINITY IN LIGHT OF ALL THE RELEVANT EVIDENCE.

(b) IN THE CASE OF A SACRED CEREMONIAL OBJECT, A GROUP WHOSE RELIGIOUS OBSERVANCES TRADITIONALLY HAVE UTILIZED SUCH OBJECT.

(c) IN THE CASE OF AN OBJECT OF NATIONAL OR TRIBAL PATRIMONY, A GROUP WHOSE PAST OR PRESENT GOVERNMENT OR TRADITIONAL CULTURAL ORGANIZATION WAS OR IS ASSOCIATED WITH THE OBJECT.

(d) WHENEVER TWO OR MORE GROUPS OR TRIBES HAVE AFFINITY TO THE SAME HUMAN REMAINS, FUNERARY OBJECT, SACRED CEREMONIAL OBJECT OR OBJECT OF NATIONAL OR TRIBAL PATRIMONY AND THEY DO NOT AGREE ON THE DISPOSITION OR TREATMENT OF SUCH REMAINS OR OBJECT, THE QUESTION OF WHICH GROUP OR TRIBE SHALL BE DEEMED TO HAVE AFFINITY SHALL BE RESOLVED PURSUANT TO SUBSECTION J. IN MAKING THE DETERMINATION, CONSIDERATION SHALL BE GIVEN TO ALL THE RELEVANT EVIDENCE OF AFFINITY.

3. "GROUP" INCLUDES AMERICAN INDIAN TRIBES.

4. "HUMAN REMAINS" MEANS ANY REMAINS OF A HUMAN BEING WHO DIED MORE THAN FIFTY YEARS BEFORE THE REMAINS ARE DISCOVERED.

5. "OBJECTS OF NATIONAL OR TRIBAL PATRIMONY" MEANS INALIENABLE ITEMS OF HISTORICAL OR CULTURAL SIGNIFICANCE TO TRIBAL GROUPS.

6. "SACRED CEREMONIAL OBJECT" MEANS AN OBJECT TRADITIONALLY UTILIZED IN RELIGIOUS OBSERVANCES.

7. "TRIBE" MEANS ANY FEDERALLY RECOGNIZED TRIBAL GOVERNMENT.

TESTIMONY BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS THE UNITED STATES SENATE

By Willard L. Boyd
President of Field Museum of Natural History
May 14, 1990

We are grateful to this Committee and in particular to you Senator Inouye and Senator McCain for your steadfast efforts to assure that American museums and Native Americans work closely and cooperatively in respecting and preserving Native American cultures. I appreciate the very great importance of cultural respect and repatriation to Native Americans. I also appreciate the very great role museums play in preserving and communicating the heritage of the American people who are both one and many people.

The issues before you have been of concern to me since joining the museum world. Recently, I had the privilege of participating in the Native American/Museum dialogue in Phoenix. I prepared a separate statement of my views which I asked be appended to the

Dialogue report. Since it was not appended, I have attached it to this testimony. I fully subscribe to the portions of the majority report relating to the role and responsibilities of museums and the exchange of information between museums and Native American groups. I also fully agree to the need for an impartial process to resolve disagreements. I depart from the Panel's proposal for ex post facto change of the substantive law applicable at the time Native American remains and cultural objects came into the possession of museums and the law applicable to Museum fiduciary duties respecting the stewardship of collections. I believe that all pre-existing legal standards and rights, including those existing under Native American customary law, must be respected and considered in the resolution process. To make major shifts now in the applicable substantive laws would in my judgement bring results far beyond the ability of all of us to foresee.

During the Dialogue, I was impressed by the understandable concerns of Native Americans about insensitive treatment by some museums of their cultural heritage. I also was strengthened in my conviction that generally museums have played, and can continue to play, a major role in multicultural learning in a pluralistic society. Accordingly, I am actively working within the American Association of Museums to develop a sustained undertaking to articulate and apply the general principles set forth in the Dialogue pertaining to the role and responsibilities of museums and the exchange of information between museums and Native American groups. I have been actively enlisting museums to endorse and participate in that positive commitment to assure cooperative working relationships between museums and Native Americans.

Even with continuing cooperative working relationships, I know there will be times when differences arise which must be resolved impartially and fairly. In a democratic society, there must be an accessible process through which to weigh and resolve such differences in an open and constructive manner.

In the Dialogue the view was clearly expressed that Native Americans have not fared well in federal tribunals and that a local process would be preferable. At the Field Museum we have developed a policy which provides such a local process. It provides for conciliation, impartial dispute resolution, and application of Native American as well as other pertinent law. The Field Museum "repatriation" policy tries to balance Native American concerns with the Museum's threefold concerns about collection preservation and scholarship, the fiduciary duty for collections, and the scholarly and public need to understand the sum as well as the parts of the human condition in an increasingly interdependent world.

Because of the centrality of collections to the Field Museum and because the Museum holds these collections in trust for the general public, our Board of Trustees recognizes that its highest and most demanding legal fiduciary duty under Illinois law is to maintain, preserve, and make accessible the Museum's collections. Therefore, the Board concludes that it should only deaccession for repatriation where there is a compelling contrary public policy which takes precedence over the Board's fiduciary duty.

The Field Board believes such a compelling contrary public policy exists where culturally related descendant groups request repatriation of ancestral human remains and associated grave objects for the purpose of reconsecrating those remains and grave objects according to traditional practices. Under our policy, the Museum will honor requests by culturally affiliated descendant groups to reconsecrate without regard to the legality of acquisition.

The Field Museum's policy also addresses sacred objects currently needed for the practice of a Native American religion. The decision to return sacred objects is based on a case-by-case analysis.

In responding to repatriation requests, the Museum opens its records and storage space to the interested parties. If the Museum and the Native American group cannot resolve issues concerning human remains, associated grave objects, and sacred objects, the Museum policy specifically provides that the Museum will submit the disagreement to an impartial third party as authorized under Illinois law, preserving to the parties the right to appeal to the state courts for a final determination.

I am actively advocating that all Museums should adopt repatriation policies of similar nature. Where a museum fails to do so, I believe that a similar state statutory process should be available. If there is neither a museum nor a state process, then I believe there must be a federal process.

I have not had sufficient opportunity to review the legislative proposal combining S1021 with S1980 which reached me late last week. As a result I must limit my comments about federal or state legislation to some general concerns. Any legislation ought to contain a three-step process to encourage conciliation, decision, and finality. Legislation should first encourage and then facilitate good faith efforts by the parties to reach mutually agreeable solutions. Failing voluntary resolution, an impartial administrative tribunal should be available to resolve the differences. Finally, explicit provision must be made for judicial review of the tribunal's decision in order to provide finality and to satisfy constitutional requirements.

Any tribunal should be a truly impartial decision mechanism. Such a tribunal should be made up of equal numbers of Native Americans and museum professionals. Neither group should be given greater representation in order to preserve the tribunal's impartiality and meet the test of procedural due process.

The impartial panel should be given latitude as to how it crafts its decision with respect to possession and stewardship of the materials in question. Legally and philosophically, both museums and Native Americans hold cultural material of prior generations in trust for future generations. Neither should be free to dispose of the material without restrictions. Accordingly, the panel should have the latitude to order reconsecration, repatriation with conditions, continued study of the objects, joint custody, or any combination of these possibilities.

Ultimate judicial review of the resolution process is essential to assure constitutionality of an administrative tribunal. Such judicial review should generally defer to the factual findings made by the administrative tribunal. All adjudication of the parties' relevant legal rights, on the other hand, must be subject to de novo review.

I believe that "standing" to initiate any dispute resolution process should be broadly defined to include any descendant group which is biologically and/or culturally affiliated with the original group. I also believe that any individuals who have any reasonable or good faith interest whatsoever, be it scientific, social, or otherwise, should be permitted to submit written and oral statements regarding any claim. Nevertheless, there needs to be a process to aid the Museum and tribunal to determine which claimant among several may have the strongest claim.

With respect to the standards for repatriation, I caution against legislation regarding the appropriate "burden of proof." Such legislation may very well result in ex post facto alteration of pre-existing substantive rights. Repatriation based on such legislated standards could constitute a taking under the Fifth Amendment. At most, the legislation should simply outline the order in which the parties are to submit arguments and proofs.

I believe that all the existing appropriate legal standards should be a part of the adjudicating process. The panel must consider Native American and state and federal law. Within each of these types of law, the panel must consider varied concepts of property law, constitutional law, and contract law. The panel must also consider the different rights uniquely held and the obligations owed by each of the interested individuals, groups, museums, sovereign and quasi-sovereign entities. In particular, the panel must be cognizant of the legal fiduciary responsibility for conserving and protecting collections.

Repatriation should apply to remains, associated grave objects, and sacred and secular objects of great significance. However, the term "cultural patrimony" as defined in the proposed Federal legislation is so broad that it covers any and all elements of a culture. Moreover, defining it in terms of "common ownership" is not consistent with the general meaning of the term.

As yet there has been no comprehensive estimate of the costs associated with various proposals for repatriation. It is essential to keep the costs of the repatriation process as low as possible. The costs of data analysis, transferring, and preparing new places of proper repose for material are substantial. The potentially large costs involved recommend a case-by-case approach to repatriation, rather than a single doomsday date which would entail multimillion dollar costs.

As you approach this complex situation, I hope you will consider the enormous contributions museums have made over centuries to knowledge and education. As human institutions, they have their failings as all humans do. Yet it is because of their central mission of collecting that we have preserved the cultural history of so many people. Museums have made extraordinary contributions to our understanding of each other, as well stated by Walter Echo-Hawk when he wrote in 1986:

> Since their inception, museums in the United States have had a relationship with Native Americans that has been both beneficial and antagonistic. Museums played

> a vital role in the preservation of Native American culture during crisis periods in which the federal government actively sought to assimilate the Indian into the mainstream of American society.
>
> Today, these collections provide a means for all Americans to better understand, appreciate, and respect past and present-day American Indians. As pointed out by several commentators, the unique perspectives of Native culture, based in large part on the North American environment, have much to offer to the dominant society which, due to increasing awareness of environmental problems, is now in the process of rethinking its relationship to the environment. Museums have played, and can continue to play a role as a bridge between cultures.[1]

And Mr. Echo-Hawk correctly concludes that, "The relationship between museums and Indians has not always lived up to its fullest potential."[2]

It is essential that we take this opportunity to assure that the relationship between museums and Native Americans will live up to its fullest potential.

Moreover, the repatriation issue goes beyond Native Americans and relates to other cultural groups in the United States and abroad as well. I have been impressed by the over-arching comments of Professor John Merryman:

> Cultural nationalism contrasts sharply with the idea of a 'common cultural heritage' that has appeared in recent international legislation affecting cultural objects. Consider, for example, the following language from the Preamble to Hague 1954:
>
> > [D]amage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world...
>
> The striking prominence commonly given to the claims of cultural nationalism in international cultural property discussions, recommendations, and legislation clearly conflicts with this recent emphasis on a more general international interest. This situation invites further investigation. How can the appropriate balance be struck between national retention/repatriation claims, on one side, and the general interest in preservation of, truth about, and access to cultural property, on the other? How far can nations be permitted to control the cultural heritage of all mankind'?[3]

We should not view this debate as one only between Native Americans, on one hand, and insensitive faceless museums, on the other. Because what is involved here is the enlightenment and understanding of all Americans who come each year to museums to be educated and to learn about each other. Indeed the Native American collections in the museums provide the means of teaching today's citizens about our Native American past in ways that benefit everyone, and that can counter the caricatures that have plagued us for generations. I sincerely hope this will be borne in mind as the Congress weighs the issues involved here.

FOOTNOTES

1. Echo-Hawk, Museum Rights vs. Indian Rights: Guidelines for Assessing Competing Legal Interest in Native Cultural Resources, XIV Review of Law and Social Change, 437-440 (1986)

2. Id

3. Merryman, The Public Interest in Cultural Property 77 California Law Review, note 6 at 362-63

FIELD MUSEUM
OF NATURAL HISTORY

OFFICE OF THE PRESIDENT

February 15, 1990

Members of the Panel
For National Dialogue
On Museum-Native American
Relations

c/o Mr. Paul Bender
Heard Museum
22 East Monte Vista Road
Phoenix, Arizona 85004

Dear Colleagues:

I greatly appreciated the opportunity to participate in the National Dialogue on Museum-Native American Relations. Since I was able to attend only three of the meetings and because I was ill during the period of compiling the written report, I submit this individual statement of my views with the request that it be appended to the Dialogue report.

Properly, the Dialogue has been about human respect and understanding centered on museum collections. Although fallible as human institutions, museums generally have been a major positive factor in gathering and preserving collections of enduring importance to the enhancement of knowledge and understanding.

Now, more than ever, I believe that museums must, and can, play a vital role in fostering mutual respect and good will among people of diverse traditions. Museums focused on a single culture are essential. Multicultural museums are equally essential if we are to celebrate our diversity together as well as separately and if we are to bridge diversity so that we appreciate our interdependence. A multicultural museum must seek the counsel of the various cultural communities with respect to preservation, research, exhibits and public programs. To this end, I fully subscribe to the substance of the report on "The Role and Responsibilities of Museums" and "Exchange of Information Between Museums and Native Americans." (Sections D(2), E(1)(2)).

The imperatives of openness, cooperation and sensitivity also apply to repatriation. While these imperatives do not eliminate honest differences of opinion, they do require an impartial process by which to resolve differences over repatriation. Therefore, I unequivocally subscribe to section E(3)(f) which

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states, "Wherever possible, the disposition and treatment of skeletal remains and other materials should be determined consensually through cooperative and timely discussions between the institution involved and all interested Native American groups. Where issues remain after such good faith discussions, an attempt should be made to settle these issues through mutually agreed-upon processes of mediation or arbitration."

Having embraced an impartial process, I am not prepared to pre-select the legal standards which should be applicable. That selection should be a part of the resolution process. In my judgement, all applicable legal standards should be applied, and they should be examined forthrightly. On the one hand I believe that the Native American law should always be considered, but I also believe that it is equally important to consider other applicable legal standards. The Phoenix meeting did not focus on the basic and pervasive fiduciary responsibility of museums with respect to collections. While I respect and appreciate the point of view on legal standards contained in the sections: "Summary of Recommendations" (Section A), "Human Rights of Native Americans" (Section D(1)) and "Repatriation Policies and Procedures" (Section E(3)), I do not feel, as a lawyer or as a museum fiduciary, that I can accept some legal standards and reject other applicable standards.

We are addressing issues of the greatest importance to the Native American community. Similarly we are addressing issues of the greatest importance to the museum community. From the museum point of view, these issues are applicable to all of our collections as was recognized in the Phoenix Dialogue. All of these issues are also of the greatest importance to the general public.

Because I understand the urgency and great importance of repatriation to Native Americans, I want to proceed with open and fair processes to resolve particular repatriation requests utilizing all applicable legal standards pertaining to the specific case. It is, however, impossible for me to agree to what I perceive as major shifts in legal standards, the consequences of which I cannot foresee. To make substantial changes in the law applicable to stewardship of existing museum collections would in my judgement bring results far beyond the intention of all concerned.

I am deeply and ever grateful to all the Dialogue participants for the insights and understanding they have generously given me. The Dialogue has been one of the most valued experiences of my life.

Respectfully,

Larry

Willard L. Boyd
WLB/ck

FIELD MUSEUM
OF NATURAL HISTORY

OFFICE OF THE VICE PRESIDENT
OF COLLECTIONS AND RESEARCH

June 4, 1990

Senator John McCain
The Russell Building
Room 111
Washington, D. C. 20510

Dear Senator McCain:

At the May 14th hearing of the Senate Select Committee on Indian Affairs, you asked Mr. Willard Boyd, President of Field Museum of Natural History, for an accounting of repatriation activities by the Museum. We have researched our records over the past thirty years, and I can provide you with the following summary information.

Until last year, the Museum had received only one request for the return of human remains. This request came in 1968 from an ad hoc group of Chicago-area Native Americans and resulted in the return of the requested remains for reburial in Wisconsin according to traditional practices. Within the past year, we have received one additional request from a tribal group in the United States, the Blackfeet of Montana. We are now working closely with representatives of the Blackfeet Tribe to facilitate the return of their ancestral remains in the very near future.

We have also received recent requests from two native groups outside the United States for the return of ancestral remains. As our repatriation policy is not limited to the native peoples of the U.S., we are working cooperatively with these foreign groups to arrange for the return of the remains as soon as possible.

In addition to the repatriation of skeletal remains, Field Museum has also worked with native groups on the repatriation of other kinds of objects of great cultural significance. In the course of the past thirty years, we have received only one request by a native group in the United States for the repatriation of artifacts in our collections. This request is again from the Blackfeet Tribe in late 1989, and is for the possible return of sacred bundles. Together we have agreed to work directly on this issue immediately after the human remains have been returned for reburial. In the meantime, we have offered to bring Blackfeet elders to the Museum to review all our Blackfeet collections to assess possible sacred objects and advise us on the correct treatment of these objects. These individuals are scheduled to visit the Museum in June of this year.

Senator McCain, Page 2, June 4, 1990

We have received several requests for the return of materials from other countries as well in recent past. Two of these cases are still under discussion, in another case we returned a Bayang Koran to the Philippine National Museum, and in a fourth case we worked with the Philippine National Museum to arrange for replicas of Agusan gold images to be made and sent back to the Philippines. In each case we have made every effort to work positively and cooperative with the native groups to insure the proper disposition of objects in the Museum's collections.

Sincerely,

Jonathan Haas

Jonathan Haas
Vice President
Collections and Research

JH/dp

Testimony Presented to The
U.S. Senate Select Committee on Indian Affairs
14 May 1990

Regarding S. 1980: TO PROVIDE FOR THE REPATRIATION OF
NATIVE AMERICAN CULTURAL PATRIMONY

Presented By
Clarence F.T. Ching, Trustee for O'ahu
Board of Trustees, Office of Hawaiian Affairs
and
Lydia Namahana Maioho, Chairperson
Native Hawaiian Historic Preservation Task Force

'ANOAI ME KEALOHA, ALOHA, SENATOR INOUYE AND MEMBERS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS. MAHALO NUI LOA FOR THIS OPPORTUNITY TO TESTIFY ON S. 1980, TO PROVIDE FOR THE REPATRIATION OF NATIVE AMERICAN CULTURAL PATRIMONY.

I AM LYDIA NAMAHANA MAIOHO, CHAIR OF THE NATIVE HAWAIIAN HISTORIC PRESERVATION TASK FORCE AND CURATOR OF THE ROYAL MAUSOLEUM OR MAUNA 'ALA. ALSO HERE TO TESIFY IN SUPPORT OF THIS MEASURE IS TRUSTEE CLARENCE CHING OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA), AND LINDA DELANEY, THE LAND AND NATURAL RESOURCES OFFICER OF OHA.

WE HAVE COME A LONG WAY, SENATOR, BUT SEEING YOUR FAMILIAR FACE MAKES ME FEEL CLOSER TO HOME AND MORE COMFORTABLE IN SPEAKING BEFORE THIS IMPORTANT COMMITTEE.

AS YOU KNOW, SENATOR, THE ISSUES ADDRESSED IN THIS BILL -- THE RETURN OF NATIVE HAWAIIAN REMAINS, HO'OMOE PU OR BURIAL GOODS, AND SACRED OBJECTS -- TO CULTURAL HEIRS FOR PROPER AND DIGNIFIED CARE HAS BEEN AND IS A SUBJECT OF DEEP PAIN AND SOMETIMES GREAT ANGER.

THEIR CARE IS ALSO AN OBLIGATION, A DUTY WHICH IF WE DO NOT ANSWER ITS CALL, LEAVES US SPIRITUALLY VULNERABLE AND TROUBLED. I AM THE KEEPER OF MAUNA 'ALA, I LIVE ON THE SAME GROUND THAT HOLDS THE BONES OF CHIEFS OF HAWAI'I, THE HEIRS OF

THE KAMEHAMEHA LINE, AND KING KALAUKAUA AND QUEEN LILI'UOKALANI. ALSO THERE IS PRINCE JONAH KUHIO KALANI'ANA'OLE -- A ROYAL SON WHO SERVED FOR MORE THAN TWENTY YEARS AS OUR DELEGATE TO CONGRESS. RESPECT FOR KUHIO LED THIS CONGRESS TO DECLARE THAT ONLY THE HAWAIIAN FLAG WOULD FLY OVER MAUNA 'ALA.

OTHER, TRADITIONAL NATIVE HAWAIIAN GRAVES HAVE NOT KNOWN THE SAME DIGNITY.

ONLY A WEEK AGO ON THE ISLAND OF MAUI, WE WITNESSED THE PUBLIC CEREMONIES COMMEMORATING THE REINTERMENT OF MORE THAN A THOUSAND NATIVE HAWAIIAN REMAINS TO THE SAND DUNES OF KAPALUA. UNMARKED, THE GRAVES OF THE HONOKAHUA FAMILY HAD BEEN DISTURBED FOR THE BUILDING A RESORT HOTEL. NOW, WITH THE ACTIVE SUPPORT OF OUR GOVERNOR, AN APPROPRIATION OF FIVE AND A HALF MILLION DOLLARS FROM THE LEGISLATURE TO PURCHASE AN EASEMENT, AND THE DETERMINATION OF THE HAWAIIAN PEOPLE, THE HONOKAHUA FAMILY HAS BEEN RETURNED AND WILL NEVER AGAIN BE DISTURBED.

OTHER MEMBERS OF OUR HAWAIIAN FAMILY, THOUGH, ARE STILL WITHOUT PEACE AND AWAY FROM HOME. WE CANNOT SLEEP UNTIL THEY DO. RIGHT NOW, MORE THAN TWO THOUSAND NATIVE HAWAIIAN REMAINS ARE AT THE BISHOP MUSEUM IN HONOLULU, MORE THAN THREE HUNDRED OTHERS ARE AT THE SMITHSONIAN INSTITUTE, OTHERS ARE AT THE PEABODY MUSEUM, AND THROUGHOUT THE UNITED STATES AND IN EUROPE.

WITH THE LEADERSHIP OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA), WE ARE ACTIVELY SEEKING CHANGES IN LAW AND PUBLIC RECOGNITION OF THE IMPORTANCE OF THE PROTECTION OF OUR PAST TO THE QUALITY OF PRESENT AND FUTURE LIVES.

LAST MONTH, A STATE MEASURE CREATING NATIVE HAWAIIAN BURIAL COUNCILS FOR EACH OF THE ISLANDS WAS UNANIMOUSLY APPROVED BY THE STATE LEGISLATURE. A COPY OF THAT BILL IS ATTACHED FOR YOUR INFORMATION.

AS DESCRIBED IN THIS NEW LAW, OHA AND THE DEPARTMENT OF LAND AND NATURAL RESOURCES -- THE EXECUTIVE DEPARTMENT WHOSE DIRECTOR IS ALSO THE STATE HISTORIC PRESERVATION OFFICER REQUIRED BY FEDERAL LAW -- ARE CHARGED TO NOMINATE THE MEMBERS OF THESE COUNCILS, AND TO GUIDE THE DEVELOPMENT OF ADMINISTRATIVE RULES AND REGULATIONS WHICH WILL ASSURE PROPER TREATMENT.

CONSISTENT WITH THE APPROACH OF THESE COUNCILS, THE NATIVE HAWAIIAN PRESERVATION TASK FORCE RECOMMENDS THAT YOU DESIGNATE OHA AS THE LEAD IN THIS BILL, AND MANDATE CONSULTATION WITH THE BURIAL COUNCILS AND NATIVE HAWAIIAN ORGANIZATIONS, INCLUDING MALAMA I NA KUPUNA. IN THIS WAY, WE CAN BE ASSURED A CLEAR AND CONSISTENT DELEGATION OF RESPONSIBILITY AND ACCOUNTABILITY.

I KNOW THE SOURCE AND DEPTH OF CARING WHICH MALAMA I NA

KUPUNA HAS BROUGHT TO THIS CULTURALLY-SENSIITIVE AND SIGNIFICANT ISSUE, BUT I ALSO BELIEVE THAT THE CREATION OF THE COUNCILS AND THE STATE CONSTITUTIONAL EMPOWERMENT OF OHA, AND THE SUPPORT OF THE OVERWHELMING MAJORITY OF NATIVE HAWAIIANS, LENDS STRENGTH TO SEEKING THIS AMENDMENT.

WE ALSO HAVE ANOTHER CONCERN WITH S. 1980, SENATOR, WHICH I"D LIKE TRUSTEE CHING TO PRESENT.

ALOHA AWAKEA, SENATOR. ON BEHALF OF THE BOARD OF TRUSTEES FOR THE OFFICE OF HAWAIIAN AFFAIRS, ALOHA AND THANK YOU FOR YOUR EFFORTS TO ADDRESS THE CONCERNS OF NATIVE HAWAIIANS.

AS INDICATED BY AUNTY NAMAHANA, WE HAVE ANOTHER AMENDMENT TO RECOMMEND. AS NOW WRITTEN, THIS BILL ONLY ADDRESSES THE LANDS OF THE HAWAIIAN HOMES TRUST. WE URGE THAT ALL FEDERAL LANDS UNDER THE JURISDICTION OF THE UNITED STATES BE INCLUDED.

AS YOU KNOW, VIRTUALLY ALL OF THESE FEDERAL LANDS ARE "CEDED" -- ARE A PART OF THE NATIVE ANCESTRAL LANDS TAKEN AT THE TIME OF THE OVERTHROW OF THE HAWAIIAN KINGDOM, AND SUBSEQUENTLY TRANSFERRED TO THE UNITED STATES AT THE TIME OF AMERICAN ANNEXATION, AND DESCRIBED IN SECTION 5 OF THE HAWAI'I STATEHOOD ACT.

THESE LANDS ARE CENTRAL TO THE HAWAIIAN TRADITION AND FORM THE BASIS FOR STILL UNANSWERED CLAIMS FOR FEDERAL RECOGNITION AND RESTITUTION. THESE LANDS -- WHETHER NOW UNDER STATE OR FEDERAL JURISDICTION -- ARE STILL TRACEABLE TO A FEDERAL RELATIONSHIP WITH THE HAWAIIAN PEOPLE.

TO ILLUSTRATE THE IMPORTANCE OF THESE LANDS TO THE SUBJECT OF THIS BILL, I WOULD LIKE TO RECALL FOR THIS COMMITTEE THAT THE FIRST LARGE-SCALE DISINTERMENT OF A TRADITONAL NATIVE HAWAIIAN BURIAL AREA OCCURRED DURING THE 1930's WHEN THE UNITED STATES BUILT KANE'OHE MARINE AIR CORPS STATION. A THOUSAND GRAVES WERE DESECRATED. ONLY THE EXTRAORDINARY EFFORTS OF BISHOP MUSEUM, LITERALLY RUNNING IN FRONT OF BULL-DOZERS, PREVENTED THE WHOLESALE DESTRUCTION OF THESE REMAINS.

THESE BONES -- FIFTY YEARS LATER -- ARE STILL CURATED AT THE BISHOP MUSEUM. WE HAVE APPROACHED THE MUSEUM AND THE NAVY REGARDING THE RETURN OF THESE REMAINS. THE MUSEUM IS WILLING TO REPATRIATE THESE REMAINS, BUT THE NAVY HAS BEEN POSTPONING THE PROGRAMATIC AGREEMENT WHICH HAS BEEN PROMISED AND WOULD ADDRESS THE RETURN OF THESE BONES TO THEIR LAND.

BY INCLUDING ALL FEDERAL LANDS, WE WOULD HAVE THE ADDITIONAL ASSURANCE THAT SUCH RETURN COULD OCCUR.

LEGAL RECOGNTION OF THESE RIGHTS IS CRITICAL.

WITHIN THE HAWAIIAN CULTURE, HUMAN BONES ARE A METAPHOR FOR THE SACRED BOND OF PLACE AND FAMILY, OF MORTAL STRENGTH AND SACRED POWER. HAWAIIAN EXPRESSIONS OF KINSHIP AND LINKAGE TO THE LAND -- "NA 'OIWI" AND "KE KULA IWI -- REFER DIRECTLY TO THE BONES AND TO FAMILY CONNECTIONS WITH PARTICULAR AREAS AS THE BONE LAND.

THIS BOND IS NOW BROKEN. WITH YOUR UNDERSTANDING, SUPPORT, AND THESE AMENDMENTS, OUR TIES TO OUR ANCESTORS AND OUR LANDS CAN BE RESTORED.

THANK YOU. MAHALO NUI LOA.

CONFERENCE COMMITTEE REP. NO. 51

Honolulu, Hawaii
April 27, 1990

RE: H.B. No. 3296
H.D. 2
S.D. 1
C.D. 1

Honorable Daniel J. Kihano
Speaker, House of Representatives
Fifteenth State Legislature
Regular Session of 1990
State of Hawaii

Honorable Richard S. H. Wong
President of the Senate
Fifteenth State Legislature
Regular Session of 1990
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 3296, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO BURIALS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this bill is to enhance procedures relating to the proper care and protection of burial sites and the enforcement thereof.

Specifically, this bill accomplishes the following:

(1) Creates five island burial councils within the Department of Land and Natural Resources to determine, among other things, whether preservation in place or relocation of previously identified Hawaiian burial sites is warranted;

(2) Revises the process for handling the inadvertent discovery of burial sites to include island burial council input;

(3) Increases the penalty for violation of Chapter 6E, Hawaii Revised Statutes;

(4) Prohibits the sale of human skeletal remains or burial goods;

(5) Requires a permit from the Department for the out-of-state transport of human skeletal remains or burial goods;

(6) Provides a process by which island burial council determinations may be appealed to a panel consisting of three members of the Board of Land and Natural Resources and three island burial council chairpersons; and

(7) Provides protection to all unmarked burial sites by requiring, in the event that a burial site is found to be other than Hawaiian, that the Department decide the proper treatment thereof in consultation with appropriate ethnic organizations and the affected property owner.

Your Committee has amended this bill as follows:

(1) Inserted the word "remains" between the words "those" and "fabricated" on line 20, page 16 of the bill, as received, to clarify that it shall be unlawful for any person to remove goods or remains, except those remains fabricated into artifacts prehistorically without obtaining a permit from the Department of Land and Natural Resources;

(2) Inserted a new SECTION 2 on line 12, page 2 of the bill, as received, declaring that the appropriation contained in the bill will cause the state general fund expenditure ceiling for fiscal year 1990-1991 to be exceeded by $, or per cent and that such expenditure is necessary to serve the public interest;

(3) Re-numbered the remaining Sections accordingly; and

(4) Replaced reference to Section 14 on line 16, page 25 of the bill, as received, with Section 15.

CONFERENCE COMMITTEE REP. NO. 51
Page 3

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 3296, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 3296, H.D. 2, S.D. 1, C.D. 1.

Respectfully submitted,

MANAGERS ON THE PART OF THE SENATE

Mamoru Yamasaki
MAMORU YAMASAKI, Chairman

Gerald T. Hagino
GERALD T. HAGINO, Member

Malama Solomon
MALAMA SOLOMON, Member

Eloise Y. Tungpalan
ELOISE Y. TUNGPALAN, Member

Mary George
MARY GEORGE, Member

MANAGERS ON THE PART OF THE HOUSE

David M. Hagino
DAVID M. HAGINO, Co-Chairman

WAYNE METCALF, Co-Chairman

Carol Fukunaga
CAROL FUKUNAGA, Co-Chairman

Peter K. Apo
PETER K. APO, Member

David Y. Ige
DAVID Y. IGE, Member

Virginia Isbell
VIRGINIA ISBELL, Member

Ezra R. Kanoho
EZRA KANOHO, Member

Fred Hemmings

FRED HEMMINGS, Member

HOUSE OF REPRESENTATIVES
FIFTEENTH LEGISLATURE, 1990
STATE OF HAWAII

H.B. NO. 3296
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO BURIALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Findings and purpose. The legislature finds that the full recognition and protection of the unique cultural values of the multi-ethnic peoples of Hawai'i are directly affected by historic preservation decisions. Of particular sensitivity to each group is the impact and response of governmental decisions on the cultural values related to the treatment and protection of burials.

The legislature further finds that native Hawaiian traditional prehistoric and unmarked burials are especially vulnerable and often not afforded the protection of law which assures dignity and freedom from unnecessary disturbance.

All human skeletal remains and burial sites within the State are entitled to equal protection under the law regardless of race, religion, or cultural origin. The public has a vital interest in the proper disposition of the bodies of its deceased persons, which is in the nature of a sacred trust for the benefit of all, and therefore the legislature reaffirms the common law rule that a land owner knowingly in possession of human skeletal remains cannot own the remains but merely holds the same in trust for cultural descendants, who have the right to possession for purposes of proper cultural preservation or reinterment.

The purpose of this Act is to augment current procedures relating to the proper care and protection of burial sites found in the State. In order to avoid future disputes arising from the discovery of human skeletal remains, this Act provides additional protection for native Hawaiian burial sites of high preservation value such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individuals or events, that are within a context of historic properties, or have known lineal descendants.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling in fiscal year 1990-1991 to be exceeded by $100,000, or 0.0039 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. Chapter 6E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§6E- Island burial councils; creation; appointment; composition; duties.** (a) The department shall establish island burial councils for Hawaii, Maui/Lanai, Molokai, Oahu, and Kauai/Niihau, to implement section 6E-43.

(b) Appointment of members to the councils shall be made by the governor, in accordance with section 26-34, from a list provided by the department, provided that a minimum of twenty per cent of the regional representatives shall be appointed from a list of at least nine candidates provided by the office of Hawaiian affairs. The department shall develop the list in consultation with appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei. The membership of each council shall include at least one representative from each geographic region of the island as well as representatives of development and large property owner interests. Regional representatives shall be selected from the Hawaiian community on the basis of their understanding of the culture, history, burial beliefs, customs, and practices of native Hawaiians. The councils shall have a minimum of nine and a maximum of fifteen members, and have a ratio of not more than three to one and no less than two to one in favor of regional representatives.

(c) The department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, shall adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section. The council members shall serve without compensation, but shall be reimbursed for necessary expenses incurred during the performance of their duties. The councils shall be a part of the department for administrative purposes.

(d) The councils shall hold meetings and acquire information as they deem necessary and shall communicate their findings and recommendations to the department. Notwithstanding section 92-3, whenever the location and description of burial sites are under consideration, the councils may hold closed meetings. Concurrence of a majority of the members present at a meeting shall be necessary to make any action of a council valid.

(e) Department records relating to the location and description of historic sites, including burial sites, if deemed sensitive by a council or the Hawaii historic places review board, are exempted from the requirements of section 92F-12.

(f) The councils shall:

(1) Determine the preservation or relocation of previously identified native Hawaiian burial sites;

(2) Assist the department in the inventory and

identification of native Hawaiian burial sites;

(3) Make recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and on any other matters relating to native Hawaiian burial sites;

(4) Elect a chairperson for a four-year term who shall serve for not more than two consecutive terms; and

(5) Maintain a list of appropriate Hawaiian organizations, agencies, and offices to notify regarding the discovery of remains.

§6E- **Inadvertent discovery of burial sites.** (a) In the event human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease until the requirements of subsections (b) to (d) have been met.

(b) The discovery shall be reported as soon as possible to the department, the appropriate medical examiner or coroner, and the appropriate police department. As soon as practicable, the department shall notify the appropriate council and the office of Hawaiian affairs.

(c) After notification of the discovery of multiple skeletons, the following shall be done within two working days, if on Oahu, and three working days, if in other council jurisdictions:

(1) A representative of the medical examiner or coroner's office and a qualified archaeologist shall examine the remains to determine jurisdiction. If the remains are the responsibility of the medical examiner or coroner, the department's involvement shall end. If the remains are historic or prehistoric burials, then the remainder of this section shall apply;

(2) The department shall gather sufficient information, including oral tradition, to document the nature of the burial context and determine appropriate treatment of the remains. Members of the appropriate council shall be allowed to oversee the on-site examination and, if warranted, removal; and

(3) If removal of the remains is warranted, based on criteria developed by the department, in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant to chapter 91, the removal of the remains shall be overseen by a qualified archaeologist and a mitigation plan shall be prepared by the

department or with the concurrence of the department.

(d) In cases involving the discovery of a single skeleton, the requirements of subsection (c) shall be fulfilled in one working day if on Oahu, and two working days if in other council jurisdictions.

(e) The mitigation plan developed by or with the concurrence of the department pursuant to subsection (c)(3) shall be carried out in accordance with the following:

(1) In discoveries related to development where land alteration project activities exist, the landowner, permittee, or developer shall be responsible for the execution of the mitigation plan including relocation of remains. Justifiable delays resulting from the discovery of burials shall not count against any contractor's completion date agreement;

(2) Project activities shall resume once necessary archaeological excavations provided in the mitigation plan have been completed;

(3) In nonproject contexts, the department shall be responsible for the execution of the mitigation plan and the relocation of remains; and

(4) The department shall verify the successful execution of the mitigation plan.

(f) In cases where remains are archaeologically removed, the department shall determine the place of relocation, after consultation with the appropriate council, affected property owners, representatives of the relevant ethnic group, and any identified lineal descendants, as appropriate. Relocation shall conform with requirements imposed by the department of health, and may be accompanied by traditional ceremonies, as determined by the lineal descendants, or, if no lineal descendants are identified, the appropriate council or representatives of the relevant ethnic group that the department deems appropriate. Specific or special reinterment requests from lineal or cultural descendants may be accommodated provided that the additional expenses incurred are paid by the affected descendants."

SECTION 4. Section 6E-2, Hawaii Revised Statutes, is amended:

1. By adding three new definitions to read as follows:

""Burial good" means any item reasonably believed to have been intentionally placed with the human skeletal remains of an individual or individuals at the time of burial.

"Burial site" means any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its surrounding context, deemed a unique class of historic property and not otherwise included in section 6E-41.

"Human skeletal remains" means the body or any part of the body of a deceased human being."

2. By amending the definition of "historic preservation" to read as follows:

""Historic preservation" means the research, protection, restoration, rehabilitation, and interpretation of buildings, structures, objects, districts, areas, and sites, including underwater sites[,] and burial sites, significant to the history, architecture, archaeology, or culture of this State, its communities, or the nation."

3. By amending the definition of "historic property" to read as follows:

""Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, [that is significant in the history, architecture, archaeology, or culture of this State, its communities or the nation.] which is over fifty years old."

SECTION 5. Chapter 6E-3, Hawaii Revised Statutes, is amended to read as follows:

"**§6E-3 Historic preservation program.** There is established within the department a division to administer a comprehensive historic preservation program which shall include, but not be limited to the following:

(1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources;

(2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, [or] bequest[;], land exchange, or other means; preservation, restoration, administration, or transference of [such] the property; and the charging of reasonable admissions to [such] that property;

(3) Development of a statewide survey to identify and document historic properties[,] and burial sites, including all those owned by the State and its political subdivisions;

(4) Preparation of information for the Hawaii register of historic places and for listing on the national register of historic places;

(5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;

(6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;

(7) Provision of technical and financial assistance to the political subdivisions of the State and public and private agencies involved in historic preservation activities;

(8) Coordination of activities of the political subdivisions of the State in accordance with the state plan for historic preservation;

(9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on the Hawaii register of historic places;

(10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;

(11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange or other means, to be held in trust;

[(11)] (12) Submittal of an annual report to the governor and the legislature detailing the accomplishments of the year and [the] recommendations for changes in the state plan or future programs relating to historic preservation;

[(12)] (13) Regulation of archaeological activities throughout the State;

[(13)] (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77; and

[(14)] (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter."

SECTION 6. Section 6E-7, Hawaii Revised Statutes, is amended to read as follows:

"**§6E-7 State title to historic property.** (a) All historic property located on lands or under waters owned or controlled by the State shall be the property of the State. The control and management of the historic property shall be vested in the department.

(b) The department may dispose of the historic property subject to chapter 171 and subject further to those reservations, restrictions, covenants, or conditions which relate to the preservation of the historic property, such as rights of access, public visitation, operation, maintenance, restoration, and repair. The department shall determine the conditions for any research affecting the historic property and may issue permits for the research.

(c) The State shall hold known burial sites located on lands or under waters owned or controlled by the State in trust for preservation or proper disposition by the lineal or cultural descendants.

[(c)] (d) The State shall not transfer any historic property under its jurisdiction without the concurrence of the department[.], and shall not transfer any burial site under its jurisdiction without consulting the appropriate island burial council."

SECTION 7. Section 6E-8, Hawaii Revised Statutes, is amended to read as follows:

"[[]§6E-8[]] **Review of effect of proposed state projects.** (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property[,] or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties[,] or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced[;], or, in the event it has already begun, continued, until the department shall have given its written concurrence.

If the concurrence of the department is not obtained within ninety days after the filing of a request with the department, the agency or officer seeking to proceed with [such] the project may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take such action as the governor deems best in overruling or sustaining the department.

(b) The department of Hawaiian home lands, prior to any proposed project relating to lands under its jurisdiction, shall consult with the department regarding the effect of [any proposed] the project upon historic property[.] or a burial site."

(c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of [such] the property."

SECTION 8. Section 6E-11, Hawaii Revised Statutes, is amended to read as follows:

"[[]§6E-11[]] **Penalties.** (a) It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) It shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(c) Any person who violates this section shall be fined not more than [$1,000,] $10,000 for each separate offense. If the violator directly or indirectly has caused the loss of, or damage to, historic property[,] or burial site, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damaged historic property[.] or burial site. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of historic property[,] or a burial site, or for the transportation of the violator to or from the historic property[,] or a burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

(d) Any person, natural or corporate, who knowingly violates this section with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years."

SECTION 9. Section 6E-12, Hawaii Revised Statutes, is amended to read as follows:

"[[]**§6E-12**[]] **Reproductions, forgeries, and illegal sales.** (a) It shall be unlawful to reproduce, retouch, rework, or forge any historic object and to represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to offer for sale or exchange any historic object with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter.

(b) It shall be unlawful for any person to:

(1) Offer for sale or exchange any exhumed prehistoric or historic human skeletal remains or associated burial goods; or

(2) Remove those goods or remains, except those remains fabricated into artifacts prehistorically, from the jurisdiction of the State without obtaining a permit

from the department.

(c) Any person violating this section shall be fined no more than [$1,000.] $10,000. Each object or part of a prehistoric or historic human skeleton or associated burial good offered for sale or trade or removed from the jurisdiction in violation of this section shall constitute a distinct and separate offense for which the offender may be punished."

SECTION 10. Section 6E-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person may maintain an action in the trial court having jurisdiction where the alleged violation occurred or is likely to occur for restraining orders or injunctive relief against the State, its political subdivisions, or any person upon a showing of irreparable injury, for the protection of [a] an historic property or a burial site and the public trust therein from unauthorized or improper demolition, alteration, or transfer of [such] the property[.] or burial site."

SECTION 11. Section 6E-15, Hawaii Revised Statutes, is amended to read as follows:

"[[]**§6E-15**[]] **Regulations, special conditions or restrictions.** In addition to any power or authority of a political subdivision to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any political subdivision may provide by regulations, special conditions, or restrictions for the protection, enhancement, preservation, and use of historic properties[.] or burial sites. [Such] These regulations, special conditions, and restrictions may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view, or both, historic easements, preventing deterioration by wilful neglect, permitting the modification of local health and building code provisions, and transferring development rights."

SECTION 12. Section 6E-42, Hawaii Revised Statutes, is amended to read as follows:

"[[]**§6E-42**[]] **Review of proposed projects.** Before any agency or officer of the State[,] or its political subdivisions[,] approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property[,] or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties[,] or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places."

SECTION 13. Section 6E-43, Hawaii Revised Statutes, is amended to read as follows:

"[[]**§6E-43**[]] **Prehistoric and historic burial sites.** (a) At any site, other than a known, maintained, actively used cemetery where human skeletal remains are discovered[,] or are known to be buried and appear to be over fifty years old, the remains and their associated burial goods shall not be moved without the department's approval[, and any activity in the immediate area which could damage the remains or the potential historic site shall cease until the requirements of subsections (b) to (d) have been met.

(b) The finding shall be reported as soon as possible to the department, the medical examiner or coroner, and the appropriate police department.

(c) After notification of the discovery of multiple skeletons, the following shall be done within two working days, if on Oahu, and three working days, if on other islands:

(1) A representative of the medical examiner or coroner's office and a qualified archaeologist shall examine the remains to determine jurisdiction. If the remains are the responsibility of the medical examiner or coroner, the department's involvement will end. If the remains are significant historic or prehistoric burials, the

remainder of this section shall apply;

(2) The department shall gather sufficient archaeological information to evaluate the significance of the remains;

(3) If the remains are significant, based on criteria established for the Hawaii register of historic places, the department shall prepare a mitigation plan. If this plan calls for data recovery, and the removal of the burials is warranted, then archaeological analysis must occur, along with appropriate study of the remains by a qualified physical anthropologist. If lineal descendants can be identified by the department, and if they oppose the physical anthropological study, then it shall not occur; and

(4) The department shall notify the office of Hawaiian affairs if it is likely that the remains are those of native Hawaiians.

(d) In cases involving the discovery of a single skeleton, the requirements of subsection (c) shall be fulfilled in one working day if on Oahu, and two working days if on other islands.

(e) The mitigation plan developed by the department pursuant to subsection (c)(3) shall be carried out in accordance with the following:

(1) In discoveries related to development where land alteration project activities exist, the landowner, permittee, or developer shall be responsible for the execution of the mitigation plan and the disposition of remains. Delays shall not count against any contractor's completion date agreement;

(2) Project activities shall resume once necessary archaeological excavations of the mitigation plan have been completed;

(3) In nonproject contexts, the department shall be responsible for the execution of the mitigation plan and the disposition of remains; and

(4) The department shall verify the successful execution of the mitigation plan.

(f) In cases where remains are archaeologically removed, the department shall determine the final disposition, after consultation with representatives of the relevant ethnic group and any identified lineal descendants.

(1) Options shall include:

  (A) Reburial on the site;

  (B) Reburial off the site; or

  (C) Curation in a depository.

(2) Disposition shall conform with requirements imposed by

the department of health.

(3) Disposition may be accompanied by traditional ceremonies, as determined by representatives of the relevant ethnic group whom the department deems appropriate.

(4) Special disposition requests from lineal descendants may be accommodated provided that the additional expenses incurred are paid by the affected lineal descendants].

(b) All burial sites are significant and shall be preserved in place until compliance with this section is met, except as provided in section 6E- . The appropriate island burial council shall determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted, following criteria which shall include recognition that burial sites of high preservation value, such as areas with a concentration of skeletal remains, or prehistoric or historic burials associated with important individuals and events, or areas that are within a context of historic properties, or have known lineal descendants, shall receive greater consideration for preservation in place. The criteria shall be developed by the department in consultation with the councils, office of Hawaiian affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui

Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant to chapter 91. A council's determination shall be rendered within thirty days of referral by the department.

(c) Council determinations may be administratively appealed to a panel composed of three council chairpersons and three members from the board of land and natural resources as a contested case pursuant to chapter 91. In addition to the six members, the chairperson of the board of land and natural resources shall preside over the contested case and vote only in the event of a tie.

(d) Within ninety days following the final determination, a preservation or mitigation plan shall be approved by the department in consultation with any lineal descendants, the respective council, other appropriate Hawaiian organizations, and any affected property owner.

(e) Should the burial site prove to be other than Hawaiian, the department, within thirty days shall determine whether preservation in place or relocation is warranted, and within an additional ninety days a preservation or mitigation plan shall be approved by the department in consultation with any lineal descendants, appropriate ethnic organizations, and any affected property owner."

SECTION 14. Section 338-25.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§338-25.5 **Disinterment of human bodies.**[]] (a) No corpse, nor the remains of any dead human body, exclusive of ashes, shall be exposed, disturbed, or removed from its place of burial, nor shall the receptacle, container, or coffin holding the remains or corpse be opened, removed, or disturbed after due interment, except upon written application made to the director of health for a permit therefor and upon the issuance and according to the terms of a permit granted therefor by the director. After any removal or disturbance the grave shall be filled at once and restored to its former condition.

(b) Notwithstanding the provisions of subsection (a), the department of land and natural resources pursuant to sections 6E-43 and 6E-   may authorize exposure, removal, disinterment, or any other act without obtaining a permit from the department of health."

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of $100,000, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act, including the hiring of necessary personnel.

SECTION 16. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this

Act.

SECTION 17. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect upon its approval; provided that Section 15 shall take effect upon July 1, 1990.

Native American Rights Fund

TESTIMONY OF WALTER ECHO-HAWK BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON THE NATIVE AMERICAN REPATRIATION OF CULTURAL PATRIMONY ACT (S. 1980) AND THE NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT (S. 1021)

May 14, 1990

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I. INTRODUCTION

Good afternoon, Mr. Chairman and members of the Committee, I am Walter Echo-Hawk, a staff attorney of the Native American Rights Fund (NARF). Thank you for the invitation and opprotunity for NARF to participate as a witness in this important hearing. I am pleased to offer testimony of behalf of NARF on the Native American Repatriation of Cultural Patrimony Act (S. 1980), the Native American Grave and Burial Protection Act (S. 1021), and the draft proposed substitute bill, which I understand will be the focus of this hearing. That proposal combines the best of S. 1980 and S. 1021 and takes into account the recent recommendations of the Report of the National Dialogue on Museum-Native American Relations. NARF is in general support of the proposed substitute bill.

My testimony will focus on three areas to: 1) summarize the need for human rights legislation to repatriate Native American human remains, funerary objects, sacred objects and cultural patrimony; 2) discuss the ample legal authority for the measure; and 3) evaluate erroneous claims that the measures before the Committee will somehow interfere with museum fiduciary obligations or impair other legimate legal interests of non-federal parties.

The instant bills and the proposed substitute bill are the product of careful consideration of a complex social problem over a several year period in Congress. These measures may very well constitute the most important civil rights and human rights legislation for Native people since the passage of the American Indian Religious Freedom Act (42 USC 1996) in 1978. In general, these legislative proposals do three things: 1) grant Native tribes and citizens sorely needed equal protection of the laws necessary to protect their dead; 2) clarify legal interests in Native dead, funerary objects, sacred objects and important cultural patrimony; and 3) redress prior violations of constitutional and human rights of Native people by establishing repatriation guidelines and procedures so that their sacred material can be finally returned to them upon request.

II. SUMMARY OF TESTIMONY

NARF is vitally interested in the instant bills, because they grant needed protections for constitutional and property rights of Native citizens and tribes, which have previously been denied on a widespread, national scale. As such, remedial repatriation relief is mandated in order to rectify these human rights violations and make the tribes whole.

These bills also advance the federal trust relationship with Indian tribes and protect tribal government interests in the repatriation of the remains of dead members and ancestors, and stolen or improperly acquired religious or cultural materials. These tribal government interests go to the core of the inherent sovereign power of Indian tribes to control their internal social and domestic relations, which has been repeatedly recognized by the Supreme Court.

Congress as trustee for the tribes has ample legal and constitutional authority to protect these Indian interests through the instant bills. Moreover, other authority exists for the instant human rights legislation under the same constitutional powers which have historically enabled Congress to enact laws disposing of federal property, protecting civil rights of citizens, and to regulate inter-state commerce.

Since the repatriation standards of the proposed substitute bill do nothing more than codify American common law on dead bodies and graves, and well established principles of American property law, no rights of third parties are adversely affected. Moreover, museum fiduciary obligations will not be impaired, because those obligations do not pertain to stolen or improperly acquired property, nor to dead bodies which are not property in the eyes of the common law.

III. INTEREST OF NARF AND ITS CLIENTS

The Native American Rights Fund (NARF) is a national, non-profit, Indian interest legal organization established in 1970 to provide legal representation for American Indian, Native Hawaiian, and Alaska Native tribes, communities, and individuals on significant legal issues. One of our priorities is the protection of human rights of Native peoples. In that regard, NARF has long been deeply concerned about desecration and looting of Native graves, mistreatment of Indian dead, expropriation of stolen or improperly acquired Native religious objects, and the inordinate problems associated with the return or repatriation of these materials to proper Native parties. In 1978 and 1979, NARF assisted the Federal Agencies Task Force in identifying the scope, nature, and magnitude of these types of First Amendment problems as a part of the government-wide review mandated by Section 2 of the American Indian Religious Freedom Act, supra.

Since 1978, NARF has represented Indian tribes in disputes over stolen religious property in the possession of museums [1]; in litigation over ownership of Indian funerary objects looted from Indian graves [2], over problems in implementing state repatriation statutes [3], and over claims of discriminatory treatment of Indian remains by federal agencies.[4] NARF also represents tribes in legislative efforts to protect tribal graves and rebury Indian dead before state legislatures [5] and Congress.[6] Presently, NARF represents a number of tribal governments in pending repatriation claims for the return of tribal dead and funerary objects in the possession of federal and state museums and agencies, such as the National Museum of Health and Medicine (formerly the Army Medical Museum) [7], the Smithsonian Insititution [8] , and the Nebraska State

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[1] See, Davis, "Indian Religious Artifacts: The Curator's Moral Dilemma," 2 INDIAN LAW SUPPORT CENTER REP. 1 (1980) [Zuni War God stolen from its shrine on the Zuni Reservation and in the possession of the Denver Art Museum.]

[2] Charrier v. Bell, 496 So.2d 601 (La. App. 1 Cir. 1986); cert. denied, 498 So.2d 753 (La. 1986) [The court applied well settled common law rules to hold that 2.5 tons of "grave goods" removed from 150 Indian graves on private lands by an amatuer archaeologist were the rightful property of the descendent Indian tribe.]

[3] Nebraska State Historical Society v. Pawnee Tribe of Oklahoma, Doc. No. 448 (D.C., Lancaster Cty., Neb., filed Jan. 23, 1990) [State Historical Society sued to prevent Pawnee Tribe's access to Society repatriation records].

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[4] Sequoyah v. Tennessee Valley Authority, 620 F.2d 1159 (6th Cir. 1980), cert. denied, 449 U.S. 953 (1980) [The Cherokee claim of discriminatory treatment by the TVA, which dug up Caucasian, Black, and Cherokee bodies to make room for a dam and reburied all except for the Cherokees, was not reached by the court in this case.]

[5] Last year, NARF represented 2 Indian tribes in legislative efforts in Nebraska, which led to the passage of the landmark Unmarked Human Burial Sites and Skeletal Remains Protection Act, Neb. Rev. Stat. Sec. 12-1201, et seq. This law not only provides legal protections for unmarked graves, but also requires all state recognized museums to repatriate dead Natives and associated burial goods which are reasonably identifiable to present day tribes upon request. Also in 1989, NARF represented 3 Indian tribes in legislative efforts in Kansas which led to the passage of the Kansas Unmarked Burial Sites Preservation Act (H.B. No. 2144), and in implementing legislation for the Treaty of Smoky Hill reburial agreement for 160 dead Indians on public display at a privately owned roadside tourist attraction (S.B. Nos. 39 and 68). Attachment 1 hereto are Wallstreet Journal and Wichita Eagle and Barrister articles describing the Kansas and Nebraska issues.

[6] Last year, NARF represented 2 tribes in negotiation and legislative efforts regarding the repatriation sections of the National Museum of the American Indian Act, 103 Stat. 1336 (P.L. 101-185), signed into law by President Bush on November 28, 1989.

[7] In this case, the Pawnee Tribe of Oklahoma seeks the return of all Pawnees who were killed and decapitated by military personnel under the 1868 Surgeon General's Order and delivered to the Army Medical Museum. Attachment 2 hereto is a recent research report on some of the Pawnee victims presently known by the tribal government, entitled "Report Verifying the Identity of Six Pawnee Scout Crania at the Smithsonian Institution and the National Museum

Historical Society.[9]

In connection with the above legal representation, NARF staff attorneys have necessarily become legal experts on the law and the legal issues and rights associated with the repatriation problems which are the subject matter of this hearing.[10]

NARF is vitally interested in the proper treatment and repatriation of Native American dead, because this longstanding social problem directly implicates fundamental constitutional rights of Indian citizens to equal protection of the laws and to rebury desecrated dead as a part of the free exercise of religion, which are secured to all citizens--including Native citizens--by the First, Fifth, and Fourteenth Amendments to the United States Constitution. Moreover, the political right of tribal governments

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of Health and Medicine."

[8] In these cases, the Larsen Bay Tribal Council of Kodiak Island, Alaska, seeks the return of about 800 dead relatives and funeray objects; and the Pawnee Tribe of Oklahoma seeks the return of about 50 dead relatives.

[9] In this case, the Pawnee Tribe seeks the return of up to about 600 dead relatives and associated burial goods for proper tribal reburial purposes.

[10] *See*, e.g., Echo-Hawk, "Sacred Material and the Law", *The Concept of Sacred Materials and Their Place in the World*, by G. Horse Capture, Ed. (Buffalo Bill Historical Center, 1989), pp. 67-81; "Tribal Efforts to Protect Against Mistreatment of Indian Dead: The Quest for Equal Protection of the Laws", 14 NARF L REV No. 1 (Winter 1988); "Museum Rights v. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources," 14 NYU REV L & SOC CHANGE 437 (1986). *See also*, Echo-Hawk, "Native American Burials: Legal and Legislative Aspects" (May, 1990) (In press); W. Echo-Hawk and R. Echo-Hawk, "American Indian Religious Freedom: Repatriation, Reburial, and Religious Rights" (Nov., 1989) (In press).

to repatriate dead tribal members and ancestors is a fundamental attribute of tribal sovereignty that pertains to the domestic internal affairs of Indian tribes, [11] and NARF is concerned that this aspect of sovereignty not be abridged in the absence of an express limitation upon it by Congress. NARF also recognizes that retention of stolen or improperly acquired sacred objects may impair fundamental First Amendment rights of Native religious practitioners [12]--a concern identified by the Federal Agencies Task Force in its 1979 report to Congress entitled American Indian Religious Freedom Act Report (August 1979) at 76-81 (Attachment 3, hereto)--and may also impair basic property rights secured to Native tribes and people by ordinary principles of American personal property law.[13]

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[11] For this long-standing federal Indian law rule, See, e.g., United States v. Kagama, 118 U.S. 375, 383-84 1886); Ex Parte Crow Dog, 109 U.S. 556, 570 (1881). As stated in United States v. Quiver, 241 U.S. 602, 605-06 (1916):

> . . .the relations of Indians among themselves--the conduct of one toward another--is to be controlled by the customs and laws of the tribe save when Congress expressly or clearly directs otherwise.

The Supreme Court cases which recognize inherent tribal government rights to regulate their internal social and domestic affairs are numerous.

[12] See, e.g., Horse Capture, ed., The Concept of Sacred Materials and Their Place in the World, (Cody: Buffalo Bill Historical Center, 1989); Blair, "American Indians v. American Museums, A Matter of Religious Freedom," 5 AM IND L J 5-6 (1979); Davis, "Indian Religious Artifacts: The Curator's Moral Dilemma," supra; Note, "Indian Rights: Native Americans versus American Musuems--A Battle for Artifacts," 7 AM IND L REV 125 (1979).

[13] See, e.g., Echo-Hawk, "Museum Rights vs. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources," supra n.10.

For the above reasons, NARF, as a national Indian legal organization, is vitally interested in the instant bills.

IV. NEED FOR LEGISLATION

Federal legislation is needed to protect Native burials and to repatriate human remains, funerary objects, and improperly acquired or stolen sacred objects. This need was recognized by museum, Indian, and anthropology representatives following a one year dialogue on the subject. Their Report of the Panel for a National Dialogue on Museum\Native American Relations specifically recommended to Congress that:

> **Repatriation standards as recommended in the Report should be judicially enforceable.**
>
> **Federal legislation implementing the recommendations of this Report is needed.**

Id. at 2. See, also pp. 5, 15, 19. Last year, Congress also recognized the need for repatriation legislation for the Smithsonian Institution, when it passed the National Museum of the American Indian Act, supra. However, that historic law affects only the Smithsonian Institution. The rest of the federal government and non-federal institutions which receive federal funds remain free to follow old policies which have long served to preclude the granting of adequate relief for injured tribes and Native citizens in this sensitive human rights area.

1. Human Remains and Funerary Objects

From a factual standpoint, the need for legislation to repatriate human remains and funerary objects is clear. It is needless to say that in all ages, Mankind has always acted to protect the sanctity of the dead. As one legal commentator has noted:

> The sepulture of the dead has, in all ages of the world been regarded as a religious rite. The place where the dead are deposited all civilized nations, and many barbarous ones, regard in some measure at least, as consecrated ground. In the old Saxon tongue the burial ground of the dead was 'God's acre.'" [Citations omitted]
>
> [American cases] all agree in principle: The normal treatment of a corpse, once it is decently buried, is to let it lie. This idea is so deeply woven into our legal and cultural fabric that it is commonplace to hear it spoken of as a "right" of the dead and a charge on the quick. [No] system of jurisprudence permits exhumation for less than what are considered weighty, and sometimes compelling reasons.[14]

Indeed, these values are reflected in the law and social policy of all 50 states, including the District of Columbia. Statutes very carefully and comprehensively protect graves and cemetaries from vandalism and desecration. Criminal laws prohibit grave robbing and mutiliation of the dead and ensure that human remains are not mistreated. Statutes guarantee that all persons--including paupers, strangers, criminals, and other unclaimed dead--are entitled to a decent burial.[15] In short, our society goes to great lenghts to protect the sanctity of the dead, and this, to our credit, is one mark of a civilized nation. As Lord Gladstone once wrote, **"Show me the manner in which a nation or a community cares**

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[14] ANNOTATION: Removal and Reinterment of Remains, 21 ALR 2d 472, 475-76.

[15] Attached hereto as Attachment 5 is a legal survey of the statutes of all 50 states, and the District of Columbia, on the disposition of the dead that apply to mainstream American society.

for its dead, and I will measure with mathematical exactness the tender mercy of its people, the respect for the law of the land, and loyalty to high ideals."

Unfortunately, these high ideals and fundamental legal protections have not served to protect the graves and dead of Native people. Nationally, it has been estimated that between 100,000 to 2 million Native people have been dug up from their graves in the United States and are now held in the nation's universities, museums, state and federal agencies, and tourist attractions.[16] These dead provide mute testimony to markedly different racial treatment of Native Americans in matters affecting the dead. To obtain census data on Native dead held by federal agencies, NARF is conducting a survey of 17 agencies identified by the National Park Service as having major archaeological programs. To date, only the National Park Service and the Tennessee Valley Authority have supplied figures: From National Park Service lands, about 3,500 Natives have been dug up and are now being warehoused; and the TVA has dug up about 10,000 Native dead from its lands. See, Attachment 4, hereto (List of Agencies being surveyed and NPS and TVA census data) How high these figures will ultimately go when the other agencies respond may well shock the national conscience.

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[16] There is no accurate national census of these dead. For various available estimates, however, See, Harris, Note, "Respect For The Living And Respect For The Dead: Return Of Indian And Other Native American Burial Remains," p.9, n.3 (In press, WASH. UNIV. J. URBAN 7 CONTEMP. L.) (March 8, 1990): DeLoria (2 million), National Congress of American Indians (more than 1.5 million), Moore (300,000 to 600,000 in U.S. alone), Haas (100,000 to 150,000).

Historians have documented the disturbing facts and circumstances under which these dead were taken by government agents, soldiers, pothunters and other private citizens, museum collecting crews, and scientists. [17] That dark and troubling history will be covered in more detail by other witnesses in order to provide a historical context in which to consider legislative policy. However, it must be noted that the taking of Indian body parts was **official federal government policy** under the 1868 Surgeon General's Order to army personnel to procure as many Indian crania as possible for the Army Medical Museum. Under that Order, over 4,000 heads were taken from battlefeilds, POW camps and hospitols, and fresh Indian graves or burial scaffolds across the country, including some from slain warriors of my own Pawnee Tribe. See, Attach. 2. That federal policy contributed, even if indirectly, to the rampant and clandestine taking of Native human remains by collecting crews from America's newly founded museums, such as Chicago's Feild Museum, that is documented and described by historian Cole (supra at 191, 248-254) as "rip and run operations".

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[17] See, Bieder, "A Brief Historical Survey of the Expropriation of American Indian Remains," (April 1990) 85 pp.(Copyright NARF\Bieder)(NILL No. 006376); Svingen, "History of the Expropriation of Pawnee Indian Graves in the Control of the Nebraska State Historical Society," (Jan. 1989) (Ms. in possession of NARF). See also, Bieder, Science Encounters the Indian: A Study of the Early Years of American Ethnology, 1820-1880 (Norman: OU Press, 1986); Cole, Captured Heritage: The Scramble for Northwest Coast Artifacts (Seattle: U of W Press, 1985); Gould, The Mismeasure of Man (NY: WW Morton, 1981); Hinsley, Savages and Scientists (Smithsonian Press, 1981) at 70.

At the turn of the Century, Congress passed the Antiquities Act of 1906, 16 USC 432, which was intended to protect against looting of archaeological resources located on federal lands. Unfortunately, this Act contributed to the problem by defining dead Indians as "archaeological resources" and converting these persons into federal "property". Under the act, human beings can be dug up under federal permits, and such "gatherings shall be made for permanent preservation in public museums." 16 USC 432. Similarly, the more recent Archaeological Resource Protection Act of 1979, 16 USC 470aa-11, defines human remains as "archaeological resources" (Sec. 470bb(1)), converts them into "the property of the United States" (Sec. 470cc(b)(3)), and if excavated under federal permits they "will be preserved by a suitable university, museum, or other scientific or educational institution" (Id.). These laws, though well intended, constitute a barbaric retreat from the American common law that holds that a dead person is not "property".[18] Under these federal statutes, untold thousands of deceased Native Americans, including the 13,500 individuals held by the TVA and the NPS, have been dug up from their graves.

The adverse impact that the above federal intrusions into Native burials have on the religious sensibilities of Native people was described in 1979 by the Federal Agencies Task Force as follows:

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[18] See, Dead Bodies, 22 Am. Jur. 2d, Sec. 4; Dead Bodies, 25A CJS, Sec. 2; ANNOTATION: Corpse--Removal and Reinterment, 21 ALR 2d 472, 480, 486; Jackson, The Law of Cadavers and of Burial and Burial Places (2d. Ed.) at pp. 129-31, 133-34.

> Native American religions, along with most other religions, provide standards for the care and treatment of cemeteries and human remains. Tribal customary laws generally include standards of conduct for the care and treatment of all cemeteries encountered and human remains uncovered, as well as for the burial sites and bodies of their own ancestors. Grounded in Native American religious beliefs, these laws may, for example, require the performance of certain types of rituals at the burial site, specify who may visit the site or prescribe the proper disposition of burial offerings.
>
> The prevalent view in the society of applicable disciplines is that Native American remains are public property and artifacts for study, display, and cultural investment. It is understandable that this view is in conflict with and repugnant to those Native people whose ancestors and near relatives are considered the property at issue.
>
> Most Native American religious beliefs dictate that burial sites once completed are not to be disturbed or displaced except by natural circumstances.

American Indian Religious Freedom Act Report, supra at 64.

In 1989, as in prior years, the consistent position of federal officials in control over Indian remains was that the above laws preclude repatriation, because they require that the bodies remain in the permanent preservation of public museums. For example, a National Park Service representative testified before the Nebraska legislature in opposition to the passage of state burial protection and repatriation legislation (See, n.5), stating:

> [T]he National Park Service is concerned that the bill, as now written, will jeopardize the integrity of federally-owned collections now curated in Nebraska institutitons. Uniform rules and regulations of the Antiquities Act of 1906 require that archaeological collections acquired under the authority of that Act and prior to the enactment of the Archaeological Resource Protection Act of 1979 be preserved in a public museum.

See, Testimony of Douglas Scott, Before the Committee on Government, Military, and Veterans Affairs on L.B. 340, January 25, 1989, p.1. In 1988, the Assistant Secretary of the Interior for Fish Wildlife and Parks issued a memorandum to other Assistant Secretaries which declared, based upon opinion of legal counsel, that no repository can "relinquish an Antiquities Act collection without the written approval of the Secretary of the Smithsonian Institution" and then "the collection may be transfered only to another museum where it must be accessible to the public." See, Memorandum of April 22, 1988 (Attach. 6, hereto) Similarly, the Bureau of Reclamation opposed repatriation guidelines of the North Dakota State Historical Society in 1989 on federal ownership of Indian remains grounds, which it contended were confered upon the federal government by numerous federal statutes and regulations. See, Letter of May 30, 1989 from Stessman Murray and attached Bureau of Reclamation technical comments.

Even though the Secretary of the Interior has recently announced that the Department of the Interior will change its policy to allow repatriation, such change in policy will cannot legally be done until the above federal laws are amended to clarify and confirm the legal capacity to treat deceased Natives in federal collections as persons and allow for their return to proper parties. Otherwise, the policy change will either be inadequate at the outset because of the limitations placed on it by existing law, or be subject to legal challenge.

Today, contemporary examples of mistreatment of Native dead and exploitation of their burials abound and can be documented on a daily basis. Even as we now speak, ranchers in Arizona are letting people dig up Indian graves on their lands for money. Hundreds of dead Indians are on public display in state and private museums. Thousands of dead Natives from all tribes are held in universities. Two weeks ago, when the Colorado legislature passed a law to protect unmarked graves, an anonymous opponent of the law mailed the sponsor of the bill a box containing an Indian skeleton, with an unsigned note labeling the remains as "Anasazi dirt bones". Grave desecration, expropriation of Native dead and funerary objects, and mistreatment of these dead by federal and non-federal persons have been serious and debilitating human rights problems for injured tribes and Native communities for far too long. Without adequate legal protections, all tribes throughout the country have been victimized by this type of activity on a national scale.

These human rights violations and problems, which are of a distinctively inter-state character, must be resolved by national legislation in the same manner that Congress addressed rampant racial discrimination against minorities by the enactment of the civil rights laws. Human rights violations of this nature, where fundamental First, Fifth, and Fourteenth Amendment rights are at stake, have never been left for protection on a "purely local basis" by bare "policies" of non-federal entities, as the suggested remedy by some anthropology and archeaology groups.

2. *Sacred Objects and Communally Owned Patrimony*

As recommended by the *Report of the National Dialogue on Museum\Native American Relations*, *supra*, the proposed substitute bill also addresses issues affecting Native American sacred objects and communally owned patrimony which "cannot be legally alienated, appropriatd or conveyed". Substitute Bill, Sec.(a),(12)-(13). The need for such legislation was first brought to the attention of Congress in the 1979 *American Indian Religious Freedom Act Report*, *supra* at 77, which described the findings of the Federal Agencies Task Force about the illicit manner in which some Native American sacred objects left Native hands and found their way into federal museums and agencies:

> Museum records show that some sacred objects were sold by their original Native owner or owners. In many instances, however, the chain of title does not lead to the original owners. Some religious property left the original ownership during military confrontations, was included in the spoils of war and eventually fell to the control of museums. [19] Also in times past, sacred objects were lost by Native owners as a result of less violent pressures exerted by federally-sponsored missionaries and Indian agents.

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[19] This is true, for example, for the important Cheyenne Dog Soldier pipe that is presently in the possession of the Smithsonian Institution. *See*, Testimony of William Parker, (S. 187) before this Committee on July 29, 1988, pp. 72-85, 158-169.

> **Most sacred objects were stolen from their original owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object.**
>
> **Today in many parts of the country, it is common for "pothunters" to enter Indian and public lands for the purpose of illegally expropriating sacred objects. Interstate trafficking in and exporting of such property flourishes, with some of these sacred objects eventually entering into the possession of museums.** [20]

The deleterious impacts caused by the refusal of museums to return stolen or improperly acquired sacred material upon the practice of traditional Indian religions has been noted by many scholars and commentators. See n.12, supra.

As to the narrow category of important, communally owned Native patrimony, which could not have been alienated or conveyed, no one would suggest that federal or state agencies or museums should retain this improperly acquired material against the wishes of the rightful tribal owner. This is clear as a matter of American property law. [21] Nonetheless, it took 75 years of negotiations between the Six Nations Confederacy and New York to secure the return of waumpum belts to the rightful Indian owner.

Finally, the need for the instant bills is demonstrated by the remarkable sheer magnitude of material which left Native hands. That massive transfer of propert was summarized by historian Cole, at 286- 310, as follows:

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[20] The stolen Zuni War God which ended up in the Denver Art Museum, which I referred to earlier in my testimony is an example.

[21] See, e.g., Echo-Hawk, "Museum Rights vs. Indian Rights: Guidelines for Assessing Competing Legal Interests in Native Cultural Resources," supra n. 10.

> During the half-century or so after 1875, a staggering quantity of material, both secular and sacred--from spindle whorls to soul-catchers--left the hands of their native creators and users for the private and public collections of the European world. The scramble . . . was pursued sometimes with respect, occasionally with rapacity, often with avarice. By the time it ended there was more Kwakiutl material in Milwaukee than in Mamalillikulla, more Salish pieces in Cambridge than in Comox. The City of Washington contained more Northwest Coast material than the state of Washington and New York City probably housed more British Columbia material than British Columbia itself.
>
> * * * * *
>
> In retrospect it is clear that the goods flowed irrevocably from native hands to Euro-American ones until little was left in possession of the people who had invented, made, and used them.

The instant bills would revers the above situation only in a very limited way for a narrow category of material that rightfully and legally belongs to Native tribes.

V. LEGAL BASIS FOR THE LEGISLATION

Ample constitutional authority exists for Congress to enact the proposed substitute legislation. This section summarizes those sources and NARF remains available to this Committee if requested to offer supplemental legal memoranda on this issue.

Congress has broad plenary constitutional power to carry out its trust obligations to Indian tribes under the Indian Commerce

Clause, the Treaty Clause, the Property Clause, and the Supremacy Clause.[22] These sources empower Congress to protect the Indian tribes in matters affecting their dead, their internal relations concerning their dead, and their communally owned patrimony--all of which fall within the inherent sovereignty of Indian tribes. Indeed, in no more sensitive area of Indian affairs does the federal guardianship-ward relationship pertain. In addition, a federal trust duty arises to remedy human rights problems and property rights problems of this nature which were significantly caused by the federal government.

Congress has equally well established constitutional authority to legislate for the purpose of protecting basic human and civil rights, such as the First, Fifth, and Fourteenth Amendment rights of Native people which are at stake here. The many federal civil rights laws have already been upheld as valid exercises of congressional authority under the Commerce Clause, the Necessary and Proper Clause, and the implementing clauses of the Thirteenth and Fourteenth Amendments.[23]

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[22] See, Cohen's (1982 Ed.) at 207-216.

[23] For examples, Title VII (42 USC 2000e) [employment discrimination] was upheld in Griggs v. Duke Power Co., 401 U.S. 424 (1971); 42 USC 1982 was upheld in Jones v. Mayer Co., 392 U.S. 409 (1968) as necessary to protect constitutional rights; Title VI (42 USC 2000a) [dicrimination in public accomodations] was upheld under the Commerce Clause in Heart of Alabama Motel v. United States, 379 U.S. 241 (1964).

Congress may regulate or prohibit the illicit interstate or international trafficking in Native American dead bodies, funerary objects, and stolen or improperly acquired Native sacred objects or patrimony under the Commerce Clause. See, e.g., 18 USC 1163 [Outlawing theft and possession of property belonging to any Indian tribal organization.] And, of course, it is clear that the United States may dispose of its own property in a manner best determined by Congress under the Property Clause to dispose of and regulate "property belonging to the United States." U.S. Const. art. IV, Sec.3, cl.2.

VI. MUSEUM OR OTHER NON-FEDERAL PARTY RIGHTS WILL NOT BE LEGALLY IMPAIRED BY THE PROPOSED SUBSTITUTE BILL

The proposed Substitute Bill will not impair any legal rights of non-federal musuems or other third parties, for a number of reasons.

First, the provisions of Section 4 OWNERSHIP do nothing more than codify long-standing American common law principles concerning the disposition of the dead and ownership of funerary objects. Those principles make it clear that: 1) landowners do not "own" dead bodies interred on their lands regardless of the age or condition of the graves, but rather only have technical possession of these persons in trust for the relatives and descendents; 2) funerary objects, when and if removed from graves are the rightful property of the person who furnished the grave or that person's descendents, if known. Hence, no landowner rights are implicated by Section 4 as to dead bodies and funerary objects. Furthermore, the same is true in the case of cultural patrimony, which is defined by the Bill as inalienable property belonging to Native groups, since that category of property belongs to such groups as a matter of basic American property law. I would urge that the same should also be true for sacred objects as defined by the Bill.

Similarly, no legitimate museum legal interests or other third party property rights are impaired by Section 5 (REPATRIATION OF NATIVE AMERICAN CULTURAL PATRIMONY), for a number of reasons. First, the Section merely codifies American property law by requiring non-federal museums which cannot establish good title to stolen or improperly acquired Native property to return it upon the request of the rightful owners. No one can argue that museums should retain stolen property or property that legally belongs to another, and Section 5 makes non-comliance with this fundamental property law rule a ground to deny elgiblity to receive federal funds to support such institutions, which is an entirely reasonable public policy.

Nor will adherence to American property law rules of Section 5 cause museums, as charitable trusts, to violate any fiduciary responsibilities that are enforceable against them. Section 5 pertains only to either property to which the museum never had good title to in the first instance (in which case is outside the scope of any legitimate museum legal interest) or to dead bodies (which are not "property" under common law to which a museum trust res can

attach). Charitable trusts presume rightful ownership of property. No museum trust obligation arises to require retention of stolen property or property that legally belongs to another against the wishes of the rightful owner.

See, Restatement (Second) of Trusts.

Even if such obligations are thought by concerned museums to somehow be present as a part of a donor bequest, any such trust obligation with regard to stolen property or property that did not belong to the donor would be unenforceable, because such trust if enforced by courts would be for illegal purposes, and for purposes that are contrary to public policy. See, generally, Restatement (Second) of Trusts, and the Doctrine of Cy Pres. Courts do not enforce such trusts, or restrictions on the use of property. Federal and state courts are in fact precluded from enforcing such trust when the terms of the trust or restrictive covenant and effect of court enforcement would violate constitutional rights. See, e.g., Shelley v. Kramer, 334 U.S. 1 (1948); Hurd v. Hodge, 334 U.S. 24 (1948) Nor are damages available to such donors against museums under these circumstances. Capitol Federal Savings & Loan Ass'n v. Smith, 316 P.2d 252 (1957).

Finally, nothing in the Substitute Bill impairs any legal interests of archeologists in studying and retaining dead Natives and funerary objects against the wishes of Native kin. Their interests have always been contingent upon consent of third parties. See, People v. Van Horn, 267 Cal. Rptr. 804 (Cal. app.

1990). Similarly, these same persons have no protectable or legitimate or in retaining stolen property against the wishes of the rightful owner or property declared by statute to be illicit. Id.

VII. COMMENTS ON THE PROPOSED SUBSTITUTE BILL

I reserve most of my comments on the proposed substitute bill to present in the oral portion of my testimony. Here I wish to emphasize, however, that NARF remains open to working with the Committee and all interested parties to produce refined and workable legislation that will implement what I believe Society has already mandated: A process that will let Indians bury their dead and restore to them their legal property.

Some techincal comments are:

1. Page 14, line 18: Shouldnt it just be paragraph (3)?

2. Page 16, Line 22: Isn't the addition of "Federal agency" throughout this subsection (c)(1) is confusing, in that the preceeding sections already address federal repatriation standards. In other words, which section controls? Insofar as the "Federal agency" provisions of subsection (c)(1) are concerned, is (c)(1) intended to duplicate (b)(1) or does it pertain to materials not on inventory lists?

3. Page 17, Line 6: Presumably, it is not the intent that Federal agency "title" can be established by the Antiquities Act or the Archaeological Resource Protection Act and rules promulgated thereunder for purposes of this Bill, and, if so, this should be clarified in order not to defeat the intent and purposes of the bill.

4. Page 19, Line 5: The Native appointees should be spelled out in more detail to be from tribal government representatives and traditional religious leaders.

5. Page 22, Line 8: The word "section" should be replaced with

the word "act".

6. Page 23, Lines 4 and 10: After the word "Interior", the words "and all other federal agencies".

Mr. Chairman, thank you for the opprotunity to offer my testimony. NARF commends you and Senator John McCain for your leadership in developing legislation policy to solve this serious human rights problem. NARF stands ready to be of any constructive assistance possible to you and your staff in this important matter.

Respectfully,

Walter Echo-Hawk, for the:

NATIVE AMERICAN RIGHTS FUND

THE WALL STREET JOURNAL.
WEDNESDAY, MAY 17, 1990

Indian Burial Site Becomes Big Issue In Little Salina, Kan.

Bone Pit Is a Rallying Point Among Native Americans For Respect to Ancestors

SALINA, Kan.—Out on Interstate 70, illboards emblazoned with Indian chiefs war bonnets still direct travelers to the rice farm east of town, down a dusty ru- l road and across the railroad tracks. he Price family's "Authentic Prehistoric dian Burial," although doomed, remains e only real tourist attraction in this quiet ansas farm town.

Here, 85-year-old Howard Price holds rth in a musty souvenir shop stocked ith cheap toy tom-toms, rubber toma- awks and fake skeleton key chains. The dvertised Indian bones are out back, in a it covered by a tin-roofed shed. Every ay, the retired grocer leads tours of the collection that has been in his family . 50 years.

Mr. Price proudly displays the earthen edestals that hold the remains of 146 Indi- ns believed to be the ancestors of modern awnee, Arikara and Wichita. Most are rawn up into the fetal position. All have een shellacked to a sheeny molasses rown. He points to what he believes to e a chief, a hunchback medicine man and mother buried with two babies. He also ows his visitors the two jars filled with eth that sit on the shelf of a dusty corner abicel.

icely Profitable

Mr. Price says the bones, reputed to be 0 years old, attract more than 10,000 visi- rs a year. At $3.50 a ticket, that has eant a tidy little business.

But not for long. In April, after lobbying ts by Indian tribes that consider the bit a sacrilege, the state offered the rices $90,000 for the collection so that the ones could be properly buried. Although e family agreed, Mr. Price is still ceved. "They say they're our ancestors, nd their spirits are giving us trouble," he rumbles. "Most of the Indians protesting is never even been here."

Nonetheless, Mr. Price's back-road one pit has become a rallying point mong American Indians who seek to pro- ct ancestral graves and rebury the thou- nds of Indian dead already unearthed. or the past five years, tribes nationwide ave made a concerted effort to regain eir ancestors' remains through lawsuits, bbying and appeals to human senti- ent.

At the heart of the issue is the historical indifference non-Native Americans have shown toward Indian burial grounds. Relic hunters have plundered Indian graves for years, selling their booty through trade shows, antique stores and collectors' magazines. Pots from prehistoric Anasazi graves in the Southwest have fetched $30,000 in Europe. A skull in good condition is worth $100, but many grave robbers just toss them aside in the search for more valuable artifacts. Two years ago, on one Kentucky farm, the bones of 800 prehistoric Indians were scattered by relic hunters. "It looked like a World War I battlefield," says Kentucky state archaeologist Berle Clay.

Ghoulish Channels

Although scientists draw a sharp distinction between such plunder and their own careful excavations, hundreds of skeletal remains have reached museums through equally ghoulish channels.

In 1868, after gathering the bodies of 3,000 unidentified Civil War dead to study wounds and infections, the Army surgeon general asked frontier outposts to send Indian remains to Washington. With the Indian wars still raging, zealous Army doctors snatched bodies from battlefields and fresh graves. In the 1890s, an employee at Montana's Blackfoot Agency packed in his hunting coat and shipped 15 skulls he had removed from an Indian cemetery.

Federal and state laws have done little to protect Indian remains. Laws covering marked cemeteries don't apply to Indian burial grounds, which are historically devoid of headstones and monuments. Laws pertaining to historic unmarked burials on government land have allowed scientists to save and study thousands of remains unearthed during the construction of highways, buildings and dams. Until recently, Indian graves on private land had little protection of any kind.

"Even in death, the Indian people cannot rest from the white man," says Jan Hammil-Bear Shield, director of American Indians Against Desecration.

"When it comes to American Indian remains, we're all of a sudden talking about 'artifacts' and 'research materials'" says Dan Wildcat, an instructor at Haskell Indian Junior College in Lawrence, Kan., and a leader of the effort to close the Salina, Kan., exhibit.

Fellow Haskell instructor Rob Daughtery is among the few Indians who have visited Mr. Price's pit. Shaken, he went home and stood in the smoke of burning cedar chips, just as his Cherokee ancestors had done to purify themselves. Later, when he showed a video of his visit to his students, a half dozen stalked out of the classroom in anger at the situation.

Such reactions are rooted in more than indignation. Many tribes believe disturbing a corpse interrupts a soul's afterlife and may bring evil down upon the living. During frontier times, enemy tribes generally avoided each other's burial grounds. Even now, some Navajo leaders won't discuss the reburial issue for fear of further upsetting the spirits. And a few frightened Sioux elders have requested cremation rather than risk being dug up, should they choose unmarked traditional graves.

"It is the most grisly and frightening problem," says lawyer Walter Echo-Hawk of the Native American Rights Fund. "One can live in fear of having one's own person as well as the person of close relatives dug up and put on public display."

In response to Indian pressure, 20 states already have passed laws protecting unmarked graves and restricting the sale and display of Indian bones and grave findings. Congress is considering similar legislation. Even the U.S. Air Force has assured Indian elders that future missile sites will avoid sacred burial grounds.

Such success has shaken the nation's museums, which have already taken most of their Indian bones off display. Their storage rooms, however, contain an estimated 600,000 human skeletal remains, more than one-third of them American Indian. Last year, the Smithsonian Institution returned some skulls to the Blackfeet under its new policy of repatriating remains in cases where direct descendants can be identified.

The problem for the Smithsonian and other museums, however, is that in most cases they don't know who the bones belong to. Of the 34,000 full or partial skeletons stored at the Smithsonian, 18,650 are the remains of Native Americans. Most are prehistoric. Only 600 are known to come from a modern tribe. Just 14 are identified by name, primarily because frontier doctors knew some of the identities of the skeletal remains they sent to Washington a century ago.

Many tribes have suggested that the scientists use their skills to determine the tribal affiliation of the rest of the bones. Others simply want a communal grave for those whose ancestry cannot be traced.

But many scientists and historians oppose such a wholesale reburial. In the past they have used remains to study past civilizations, chart various diseases and in some cases, even solve crimes. Authorities recently determined the tribal identity of a murder victim by comparing his X-rays to remains at the Smithsonian. "These are not studies being done in a disrespectful way," says anthropologist Douglas Owsley, a curator at the Smithsonian. "You are talking about people who have dedicated their lives to learning about medical questions and past populations."

But Indians are unmoved by these arguments and by assurances that, at least at the Smithsonian, the remains are catalogued and carefully stored in wooden cabinets away from public view. "Whether it's old iron boxes, cardboard boxes or old grocery sacks, that is not proper treatment for human beings," says Ray Apodaca, director of the Texas Indian Commission.

In Salina, Kan., however, the Indians have prevailed. Discovered in 1933 when a farmer's dog scratched up a few bones, the burial ground was bought four years later by the Price family, prominent local grocers and farmers.

At the time the Prices erected their billboards, there were few Indians still living in Kansas. By the 1880s, the U.S. Army had pushed most of them farther west. The remaining tribes—the Pottawatomie, the Kickapoo, the Iowa and the Sac and Fox—were forced onto small reservations miles from Salina. Though some Indians had heard of Price's "Authentic" Indian burial, few had ever visited. Then, in late 1985, an Indian traveler spotted the billboards and stopped by. Outraged, she took her grievances to the faculty at Haskell.

The college responded by inviting Indian leaders, and state archaeologist Tom Witty, to a seminar. There the faculty learned that Mr. Witty had already persuaded the Kansas Legislature to buy the pit and build a museum over the site. the seminar, Mr. Witty presented the sa slide show he had been giving to the politicians. Instead of being impressed, some of the Indian elders wept: They did not want the remains displayed in any manner. Because of the emotional outpouring, Mr. Witty abandoned his plans for a museum and joined the Indians in pushing for reburial.

"We are dealing with someone's ancestors," he says. "We just cannot do research anywhere, anyway, anytime we want to."

In the months after the seminar, lawyers from the Native American Rights Fund met with Salina officials to block the town's own plans for buying the site. In conciliatory tones, Indian attorneys said such an effort would offend Indians and could result in the sort of expensive lawsuits already filed in Nebraska, Louisiana and other states. Meanwhile, tribal groups invited local citizens to workshops about Indian culture and religion. "I think the fact that everyone got together made a big difference," says Pennington Geis, county commissioner.

In the end, the local newspaper branded the burial pit a "community disgrace," and, to Howard Price's dismay, not even the local chamber of commerce rose to his defense.

"What could I do? I was the only one fighting them," complains Mr. Price, who will give up his exhibit later this year. After a brief study, it will be filled and capped with a concrete dome to prevent looting.

In the meantime, Mr. Price is making the best of his own bad times. Because of the publicity surrounding his site, he's been able to double ticket prices.

By ROBERT TOMSHO
Staff Reporter of THE WALL STREET JOURNAL

14A THE W HITA EAGLE Sunday, April 8, 1

NATION IN BRIEF

Free at last

Spirits of Plains Indians can rest after reburial

What if museums, universities and government agencies could put your dead relatives on display, or keep them in boxes to be cut up and otherwise studied? What if you believed that the spirits of the dead could not rest until their human remains were placed in a sacred area?

— Suzan Shown Harjo
National Congress of American Indians

The spirits of 146 Plains Indians can now rest. The bizarre exhibition of their remains is over. They are back again in hallowed ground, disturbed no longer.

The Indians — evidence indicates they are Pawnee, Wichita or Arikara — lived in the Salina area 600-1,000 years ago. They were buried together, each in the fetal position, with their heads pointing south and their faces to the east.

There they rested for hundreds of years. But late in the summer of 1936, the bones were unearthed on the Howard Price farm. They became a tourist attraction.

The Price family created the Indian Burial Pit in a white tin shed. They shellacked the remains to a shiny brown every year. Tourists could view a carved-out circle of skeletons from a concrete walkway surrounding the burial ground. Thousands did so every year; the going price in 1989 was $3.50 per person.

But that was the last of the show. The 1989 Legislature brought this sorry spectacle to an end. It passed a law to close down the roadside attraction — the state paid the Price family $90,000 for the quarter-acre site — and to ban possession of human skeletal remains taken from unmarked burial sites.

Some anthropologists and archaeologists consider the closing of the unique burial site to be a loss. About six years ago, the state historical society wanted to build a $1.4 million museum on the site, but gave up after hearing opposition from Indians.

In fact, state archaeologists rightly joined the fight to rebury the bodies. The display itself shocked many of the scientists.

These were victories for Native Americans. But victories in Kansas do not mean the struggle against exploitation and desecration of Indian remains is over.

The commercial and questionable scientific use of Indian dead has been a national disgrace for years. There are 1.5 million Indians now living in America; the National Congress of American Indians says they may be outnumbered by the remains of Native Americans stored in museums, educational institutions, state historical societies and private collections.

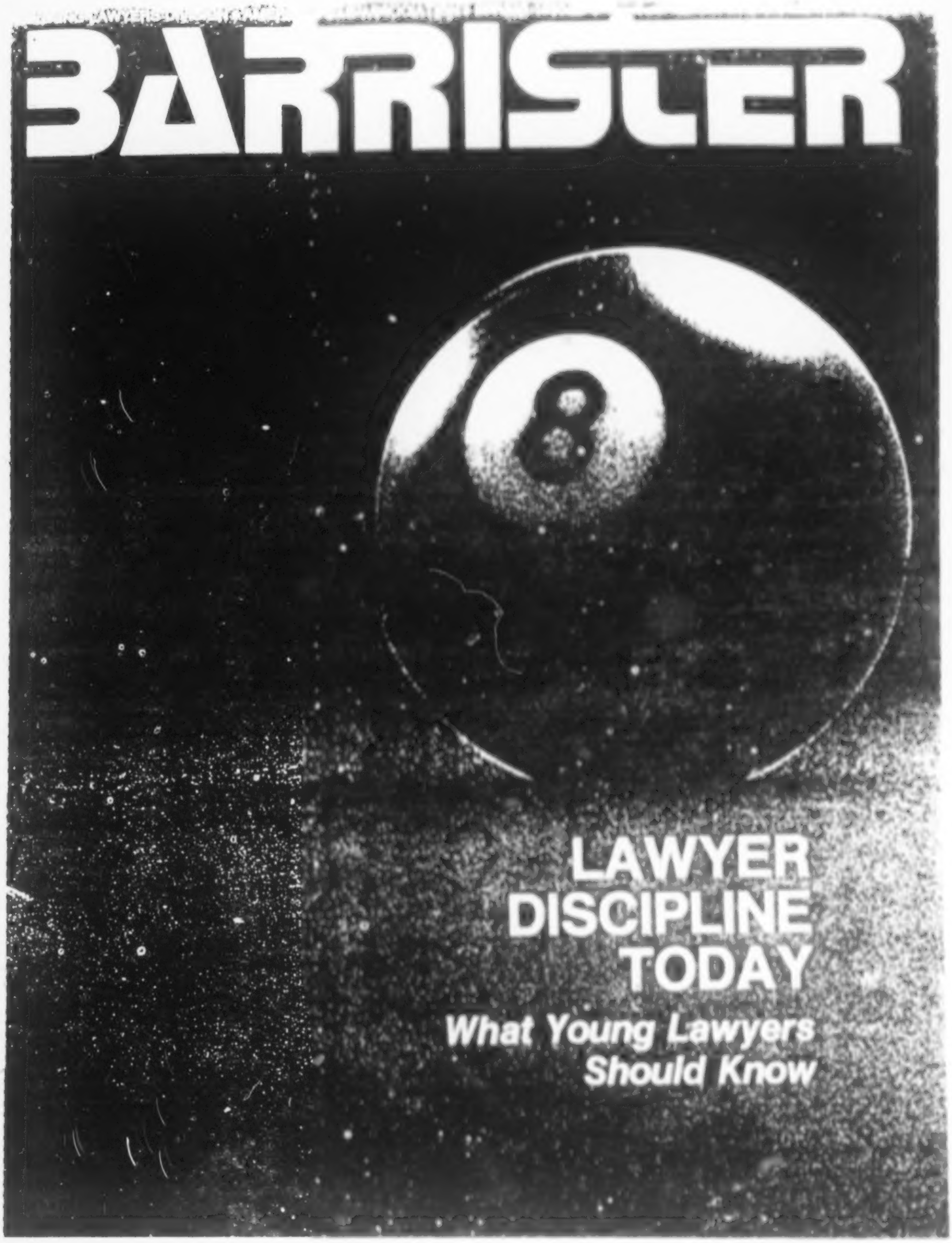
Still, the movement for dignity for Indian dead continues to grow. Including Kansas, about two dozen states now ban possession of human skeletal remains and require anyone who uncovers burial sites to report the discovery to authorities. We may see the day when every state has stopped this travesty.

Archaeologists and Indian leaders gathered near Salina last week for the reburial ceremony. The Indians carried brightly colored blankets and shawls to wrap the skeletons, and ancient Indian medicines to consecrate the ground.

Archaeologist Diane Good and Lawrence Goodfox Jr., a Pawnee Indian, both said they sensed living spirits in the burial pit. "I think the spirits here are disturbed," said Mr. Goodfox. "I think we must put them at rest."

While scientists placed blankets over the remains in the pit, Mr. Goodfox stayed outside, as Indian religion commands. Then he went inside, placed the Indian medicines on a mound of sand and prayed.

The spirits of the dead are at peace. The burial site is sacred ground once more.



BARRISTER

LAWYER
DISCIPLINE
TODAY

*What Young Lawyers
Should Know*

WHO OWNS HISTORY?

by Vicki Quade

Who owns a people? Will the law help Native Americans recover their ancestors' remains and memories?

Maria Pearson, a Yankton-Sioux from Ames, Iowa, remembers clearly the day in 1971 when an Iowa highway road crew accidentally unearthed an unmarked cemetery in the southwest corner of the state.

Her husband, John, a construction engineer for the Iowa Highway Com-

ENTIC PREHISTORIC
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T NEXT EXIT

Native American Rights Fund

mission, came home with the news.

"The bodies of 26 white people were taken out, placed in new coffins and reburied nearby," she says. "They found one Indian woman and her baby. Their bodies were placed in a cardboard box and shipped to the state archaeologist in Iowa City for study."

Shaken by the incident, the 37-year-old Pearson retreated to her backyard, where, standing under a group of cottonwood trees, she prayed. "I had lost my grandmother and I was very close to her, and I remember her saying, 'Listen for my voice on the wind.' I stood out there and I heard my grandmother say, 'Girl, there comes a time when everybody must stand and fight for what they know is right. Protect your ancestors' final resting place.' "

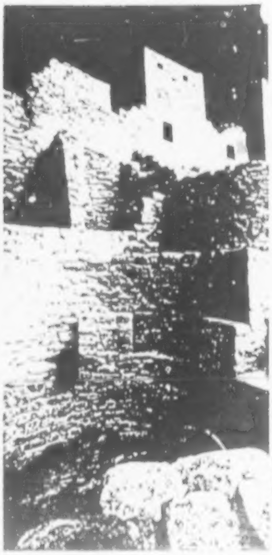
That night, Pearson, now one of the country's leading Indian rights activists, experienced an awakening of her heritage, which led the young civil libertarian on a political and legal campaign. She lobbied the state's governor, mounted an effective public speaking campaign (often dressed in moccasins and native clothing), and finally won her fight. In 1976, Iowa become one of the first states to require the reburial of skeletal remains from unmarked graves.

"I told the governor that the rights of Indians would be a major national issue in 10 to 15 years, and he could either be a leader or a follower," Pearson recalls. Her prediction has come true, on national and local fronts.

What sounds like an issue of limited interest has developed this year into a battle between some of our country's most prestigious museums and various lawyers and politicians pushing on federal and state fronts for legislation to protect the burial grounds of our country's first settlers.

Indian tribes have mostly relied on the goodwill of museums or municipalities to return tribal items of importance. Two years ago, the Smithsonian Institution returned a collection of war gods to the Zuni Indians in New Mexico. In 1985, the city of Chicago returned a sacred Kwakuit'l totem pole at the request of its Canadian tribe, and accepted a modern substitute. In 1989, Harvard's

The Image Bank/Ann Kane



The Image Bank/Charles C. Place

The Image Bank

Who owns the past? Does archeological investigation damage the link between Native American history and today's Indian religious practices?

Peabody Museum returned a sacred totem pole to the Omaha Tribe in Nebraska.

However, not all requests have been met in the same spirit of cooperation.

Consider the situation in Kansas, where a farmer digging on his property unearthed an Indian cemetery. Instead of reburying the bodies, he put them on public display. All 146 skeletons were varnished and identities were attached. Here was the chief, there an Indian mother with child.

For more than 50 years, that farmer has charged tourists a small fee to view that slice of American history. Last year, the tourist attraction at Salina, Kansas, became a focal point in a larger debate over the rights of American Indians. Believing those varnished skeletons to be ancestors buried on their original land, the Pawnee Tribe of Oklahoma demanded that the site be closed and the bodies reburied.

In neighboring Nebraska, a similar fight pitted archaeologists and scientists against representatives of the Pawnee Tribe over the question: Who owns the past? Specifically, the Pawnees demanded the return of some 300 Indian skeletons and 10,000 burial goods unearthed by the state's archaeologist and held by the Nebraska State Historical Society.

This time, a group of young lawyers, most of them Native Americans, took up the fight to have their ancestors buried in peace and with dignity.

Walter Echo-Hawk has been at the heart of both battles. Senior attorney for the Native American Rights Fund in Boulder, Colorado, Echo-Hawk calls the unearthing of Indian remains nothing more than racist grave robbing. His detractors call his suggestion to rebury Indian bones and artifacts nothing more than a blight on the scientific study of the past.

A mounting body of legislation is likely to force a change. More than 20 states prohibit the removal of Indian remains and artifacts from unmarked graves, but Nebraska is the first to address the issue of reburial.

Last summer, Nebraska passed a landmark law that calls for state-supported museums to return Indian bones and artifacts to their native tribes.

James Hanson, director of the Nebraska State Historical Society, fought the passage of that legislation, calling it "bald-faced censorship" and suggesting that the Pawnee Tribe involved really wanted to have possession of the burial goods he estimates are worth millions of dollars.

Kansas followed suit, adopting the Kansas Unmarked Burial Sites Preservation Act. State legislators also allocated $90,000 to buy the Salina burial pit and close it down.

At the federal level, nine bills were introduced last year in Congress to address the issue of Indian rights. One bill, the National American Indian Museum Act, moved swiftly through Congress and was signed into law last November. Sponsored by Sen. Daniel Inouye (D-Hawaii), the law transfers the Museum of the American Indian from New York City to Washington, D.C., where the Smithsonian will then combine the collection with its own and construct a new museum to the American Indian.

This spring, Congress is expected to start hearings on three bills introduced by Sen. John McCain (R-Arizona), Rep. Morris Udall (D-Arizona) and Inouye requiring the reburial of skeletal remains and burial goods from any institution that receives federal funds, including the Smithsonian Institution.

During the past year, the Smithsonian has been involved in sometimes bitter negotiations with Walter Echo-Hawk, a member of the Pawnee Tribe, over the issue of returning 18,500 Indian skeletons now in the museum's collection. After months of negotiations, the Smithsonian agreed to return, on request, any remains and artifacts that can be linked "with reasonable certainty" to present-day tribes.

Nearly 40 tribes have since contacted the Smithsonian with reburial requests, and many of the remains are expected to be returned this year. Meanwhile, other museums, including ones at Stanford University, the University of Minnesota, and the North Dakota Historical Society, have agreed to voluntarily return remains and objects.

Echo-Hawk's campaign has succeeded in heightening the sensitivity of many to the display of human remains. The Dickson Mounds Museum in downstate Illinois, which features the skeletal remains of 234 prehistoric Native Americans, started this year off by announcing it would close its 60-year-old exhibit as a show of respect.

While it appears that the lawyers behind this fight are winning, there is still a gnawing question: What is being lost with the reburial of these skeletons and artifacts? We will never know what will be lost to science. Technology not yet invented could yield information that may prove helpful to those studying evolution.

Dr. Larry Zimmerman, a professor of anthropology at the University of South Dakota, explains: "Twenty years ago it was impossible to extract DNA material from bones, yet we're doing that today. We can learn a lot of genetic information from skeletons.

"We might one day be able to genetically trace where one tribe of Indians came from, which groups of Indians they came from, which tribes evolved from other tribes. We would learn a great deal about migration patterns, about evolution.

"Of course," he adds, "we won't learn any of that if all of the bones are reburied."

The current controversy involving the reburial of Indian skeletons and remains has a simple solution, Pearson says. "The non-Indian world always needs to know what and who possesses," she says. "And being an Indian, I've always felt inside of me: Who owns the air? Who owns the trees? Who owns the environment? How can you possess a river? How can you possess the ocean?"

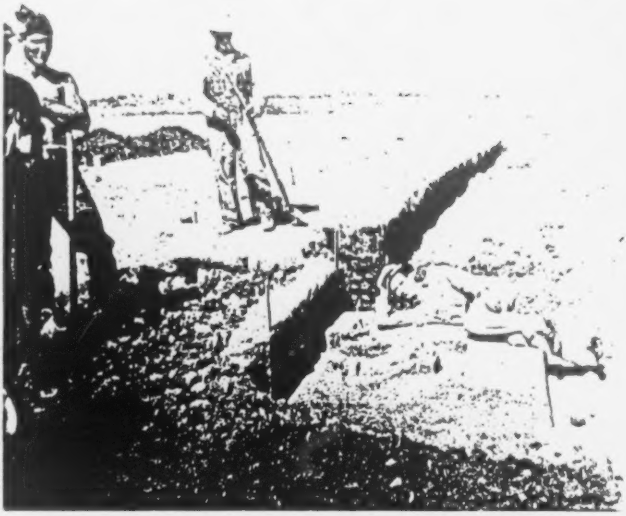
"And the museums say, 'We went out there and we dug that grave and those things in that grave now belong to us.' But they forget that the dead have rights, also."

Pearson adds: "When you trace historically backward, I am a product of my mother and father, and my mother and father are products of my grandparents, and so on, and so on, generation after generation. Who can possess an intangible, except those ancestors and the descendants of those ancestors? That lineage comes to us. It is the inherent right of every individual to possess the historical past that is theirs, for themselves, their children, their grandchildren, their great-grandchildren.

"When an archaeologist digs and he shakes to the very roots a living soul, it is wrong," she says. "It is wrong for anybody to go into my grandmother's grave, my great-grandfather's grave, my great-great grandfather's grave, because through all of this comes the mental security of my children, my grandchildren, and my great-grandchildren."

Pearson adds: "It says something about where mankind has progressed to, or regressed to, because we are now coming into another era of barbarianism. There are people in society who want something from the Indian. The only way they can acquire it is through robbery. They go into our graves, they try very hard to destroy the link that keeps the American Indian today in tune with our roots.

"They cannot destroy that link, no matter how many pots, how many vessels, how many death spoons, how much funeral furniture they steal from



Kansas State Historical Society

Kansas State Historical Society

In top picture, Nebraskans at work and play at an Indian burial site. At bottom, Native American remains on public display.

Native American Rights Fund

Vicki Quade

Native American attorney Walter Echo-Hawk on early research: "They concluded that the Indian was a barbarian, doomed to extinction."

the dead and put into museums, they cannot destroy that religious belief that Indians live with today.

That belief—that skeletal remains and items buried with the dead should be returned to the earth—has pitted anthropologists, archaeologists, and museum curators against those activists who are slowly winning their legal fight.

John Echohawk, director of the Native American Rights Fund, believes that the right of Indians to restore their burial grounds will be the major legislative story of the 1990s. "It's a question of common decency: the protection of grave sites," he says.

This issue is also tinged with a sense of justice for Native Americans, who for centuries have felt oppressed and without a political voice, says Echohawk, one of the first Indians to go to law school in the 1960s. His cousin, Walter Echo-Hawk, followed in his footsteps as a law student in the 1970s.

As more tribal members entered law schools, Echohawk says, the more tribes realized their voices would come from within. It was only a matter of time, he adds, that the reburial question would be pushed with such vigor.

There have been few court decisions in this area. The most notable one, *Charrier v. Bell*, is a Louisiana case from 1985 where the Twentieth Judicial District Court held that grave goods taken from 300-year-old abandoned graves by an amateur archaeologist belonged to the descendant tribe.

The amateur archaeologist had unearthed two-and-a-half tons of Tunica Indian burial goods from 150 graves that had been located on private land in Louisiana, and had sought to quietly title the goods in order to sell them.

The court held that the Tunica Tribe was the lawful owner of the grave goods, ruling that the common-law doctrine of abandonment does not apply to burial materials.

The Antiquities Act of 1906, prior to the enactment of the Archaeological Resources Protection Act, provided the primary protection for archaeological resources "situated on lands owned or controlled by the Government of the United States."

That protection for Indian burial sites was extended when Congress passed the 1973 Archeological Resources Protection Act. Until then, unmarked an graves held about the same status as garbage dumps. Anybody could disturb them.

"All societies in all ages have always buried their dead with reverence, religion, and respect," says Walter Echo-Hawk. "And American Indians are no different in that regard. It's a fairly simple matter for lawmakers and policymakers to say, 'Oh yes, we forgot the American Indian, and we need to incorporate them in our same legal protections.'

"The more difficult question is what kind of remedial relief needs to be legislated in order to remedy the prior denials of equal protection of the law," says Echo-Hawk. "That denial has resulted in the massive expropriation of native dead. We have untold thousands of native bodies that are presently laying in museums, mute testimony to the denial of equal protections. What kind of remedial relief needs to be legislated in order to correct that situation? That's what we're looking into now."

The issue, he says, is one of consent. No Native American tribe has ever consented to having the graves of its descendants dug up, he says. And now those same tribes, many suffering from high unemployment and depressed economies, are faced with reburial costs.

Echo-Hawk's own Pawnee Tribe intends to rebury each returned skeleton in a Pendleton woolen blanket, each costing about $100. "They were originally buried wrapped in buffalo robes," he explained. "This is the closest we can come to replicating their original burials." The tribe has established a reburial fund to help offset the expense, but Echo-Hawk is convinced that federal tax dollars will have to be appropriated to help all tribes involved in reburials.

Estimates vary regarding the number of Indian skeletons that have been unearthed, from a low of 100,000 to a high of 2.5 million. In the 1860s, the federal Surgeon General issued an order to Army medical doctors to procure Indian crania for tests that were designed to prove that Indians were savages, barbarians naturally doomed to extinction, Echo-Hawk says. "They were trying to prove that by measuring heads. Under that order 4,000 crania were taken from the bodies of Native Americans.

"They measured the crania and applied pseudoscientific assumptions, like the size or shape of your head has something to do with intelligence and morals, and applied a set of very skewed statistics. And, yes, they concluded that the Indian was a barbarian doomed to extinction."

In reality, he says, the federal government was conducting genocide against the American Indian, and using the finding of its crania study as a justification for taking land away from the various tribes. "You see, having these bodies returned is justice for the American Indian," Echo-Hawk says. "This is really the first step in eliminating long-standing discrimination, in healing long-standing wounds."

In 1987, Nebraska Sen. James Pappas, at the request of the Nebraska Indian Commission, introduced a bill that called for the adoption of the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act.

As part of that proposal, photos began circulating around the state legislature. They showed Nebraskans in the early part of the Twentieth century digging up Indian burial grounds. In one photo, a man flashes a wide grin as he lays alongside an unearthed Indian skeleton.

In another, an Indian skeleton is shown dumped into a wooden box, the head and legs protruding. Although unsuccessful, Pappas' efforts and the public outcry that followed his billed, lead in the summer of 1989 to the passage of LB 340, the first legislation nationwide to require the reburial of Indian skeletal remains and the artifacts held by state-funded museums.

Behind the legislation was a fight for years between the Pawnee Tribe of Oklahoma, an original settler of Nebraska lands, and the Nebraska State Historical Society regarding the return of skeletal remains and artifacts unearthed by the state's historical society half a century ago, and held by the society ever since.

"I'm a believer that science should be served," says director James Hanson. "I certainly support archaeological investigations. The problem we've encountered is the question of whether or not museums can have collections of material that were dug up half a century ago."

The Nebraska collection he oversees has 250,000 archaeological items relating to Native Americans, Hanson says. Under the terms of the new law, the state will be required to turn over 10,000 artifacts and 300 skeletons for reburial.

The Nebraska Unmarked Burial Sites and Skeletal Remains Protection Act was sponsored by State Sen. Ernie Chambers, the only black member of Nebraska's legislature. While it is the first act to require museums to divest themselves of collection material found with skeletal remains, it does not apply to items held in private collections.

When asked for his comment regarding the debate over Indian remains and artifacts, Chambers replied: "You mean the dispute or the war? A debate means that each side has a point and it's conducted by the presentation of facts. I don't think the archaeologists as a whole have conducted this like a debate. They've been ethnocentric, arrogant, and in their own minds conscious of holding all of the cards.

"Having that attitude, they've dealt with Native Americans in a shabby fashion," Chambers says. "One that would make every fair-minded person ashamed if he or she became aware of it."

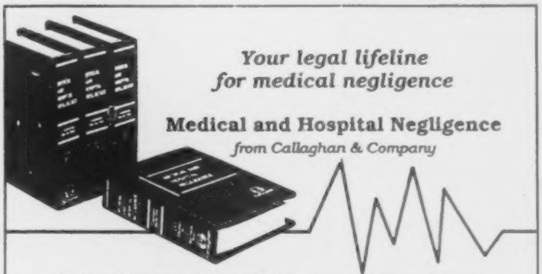
Chambers disagrees with the idea that archaeologists have a right to study the past. "If you consider history anything that happened before today, then anytime we bury someone or something, we are burying a part of our past. To carry that philosophy to its logical conclusion, we should say that in order to preserve our history for the next generations, any corpse that is buried should have a bond scraping, skin sample, and hair sample taken before burial, so future generations can study that," he says.

"Now, nobody could take that proposal seriously. It's abhorrent. But the archaeologists put Native Americans in a compartment other than the rest of humankind, and that compartment is placed at a lower level," Chambers says. "So they feel free to do to them what they wouldn't dream of doing to others.

"If the dead are going to be respected, then the attitude should be extended to all people. If they can dig up Indians, then we should be able to dig up Civil War burial sites. We should be able to dig up parts of Arlington National Cemetery to study the remains of those who were in various wars."

Last year, a Catholic cemetery in Omaha was vandalized. Headstones and decorative markers were knocked over, but no graves were robbed. "The whole city was outraged," says Chambers. "If they can be outraged about these stones, they should un-

(Please turn to page 30)



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WHO OWNS HISTORY? (from page 21)

derstand the sensibilities of Indians."

This law is "the first to undo a serious injustice," he says. "In the future, because we feel so good about the good we've done in this instance, we may be moved to do even more. I think this bill is going to set a tone, and start a bandwagon effect across the country."

Nebraska's landmark law has ramifications, Hanson warns. "It's destroying an area of science, and I see some very strong parallels between the Scopes trial in the 1920s and this. It surely can't serve any real purpose to destroy scientifically derived collections because it happens to offend someone. The excuse that's been given is this is in contradiction to Native American religion. And yet you might ask around, I don't think anyone practices the same religion as the people whose remains have been exhumed."

What Hanson really objects to is losing the burial goods that will have to be reburied along with the Indian skeletons. "They are priceless," he says. "They are worth millions, irreplaceable."

Among the artifacts to be reinterred are a peace medal brought to Nebraska by Lewis and Clark in the 1800s to win friends among the Indians. "That has as much or more to do with white history, or American history, as it does with Indian religion," Hanson argues.

The Nebraska Historical Society has two peace medals, both bearing the likeness of Thomas Jefferson, which were presented by Lewis and Clark to the Plains Indians. Of those two, one will be buried. Also scheduled for burial is the only British peace medal in the museum's collection, bearing the likeness of King George III.

Under the terms of the Nebraska law, all materials already identified as burial artifacts will be reinterred this September.

"The odd thing about this law is that it confiscates scientific collections from museums. It does not affect privately held collections," Hanson notes. "If I was a private citizen and had dug up 20 or 30 skeletons, I could exhibit them in my store window, or I can sell them. I can do anything I like with them. But a museum cannot, and this is why I regard this law as a blatant attack upon science and research."

Robert Peregoy, a young lawyer with the Native American Rights Fund, fought for the passage of the Chambers bill. "This issue is important to Indian people because it goes to the whole fundamental issue of respect and dignity of living Indian people, as well as those who have gone before them," he says.

"The fact is, Indians have been singled out for differential treatment over the years through massive grave robbing," Peregoy says. "The Pawnee Tribe religious beliefs hold that if their ancestors remains or burial goods are disturbed, the spirits of the deceased will never rest, and it brings spiritual sickness to those who are still living. It's a very upsetting phenomenon that has occurred on a massive scale across the country.

"It's really a fundamental violation of their First Amendment rights to freely practice their religious beliefs," he adds.

Nebraska archaeologists have had 50 years to study the remains in the historical society collection, Peregoy argues. "The scientific community appears to want to hang on to these remains in perpetuity."

The Nebraska law came out of the state's Government, Military and Veterans' Affairs Committee, which deals with governmental agencies. "I went into the hearings very neutral, but I wasn't able to stay that way for long," says committee chair Sen. Dennis Baack.

"The way I look at it, we will be burying a part of history, but we probably didn't have the right to dig up part of the Native American history to start with. I became convinced that the artifacts are such a part of their religious beliefs that we have no right to keep them. Their religious beliefs are also part of our history. By putting them back, we are honoring part of our history, rather than burying it," Baack says.

That is also the belief held by the Pawnee Tribe, which for three years has been trying to shut down the Salina, Kansas, tourist attraction where 146 prehistoric Pawnees have been on display. "They've been exposed to extremely deplorable conditions, says Walter Echo-Hawk of the skeletal remains. "It's a grisly site, a scary, creepy situation."

"The sanctity of the dead has always been respected by all people, but somehow the Salina site has been allowed to exist, to thrive, and it is time we respected those who we feel deserve the right to be buried."

Based on Echo-Hawk's work, the Kansas legislature passed the Kansas Unmarked Burial Sites Preservation Act. Under an agreement worked out between the Native American Rights Fund, the state legislature, the family that unearthed the remains, and the Kansas State Historical Society, the state allocated $90,000 for the purchase of the Salina burial pit.

The sale of that pit was finalized shortly after the first of this year, and the Pawnee Tribe plans to conduct a private ceremony this spring to rebury those 146 ancestors, sealing the site in concrete and marking it with a commemorative plaque.

Dan Wildcat, a professor at Haskell Indian Junior College, in Lawrence, Kansas, and a Yuchi-Creek Indian rights activist, also worked to close down the Salina site.

"The desecration of American Indian burial sites shows a complete disrespect for American Indian religious traditions and a disregard for the survivors, the living descendants of those people who were buried," Wildcat says.

The Kansas legislation sets up a burial site protection board, with members selected from the fields of physical anthropology, archaeology and history, as well as members from the state's four resident tribes—the Sac & Fox, the Prairie Bank of Potawatomi, the Iowa Tribe of Kansas and Nebraska, and the Kickapoo Tribe.

Archaeologists can apply to the board for permission to study burial sites. "It's not perfect," Wildcat says. "It didn't please everybody, but a consensus was forged and it allows us to protect future sites."

Tom Witty, head of the archaeology department of the Kansas State Historical Society in Topeka, at first objected to the reburial of the Pawnees in the Salina burial pit. The more he thought about it, though, the more he came to this conclusion:

"As a scientist, an archaeologist, I have to say the Salina site is an important historical site. I would love the opportunity to study it. On the other hand, when you see the commercialism of something that was meant to be sacred, you have to ask yourself, 'At what point do we say enough is enough?'"

Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3621

April 23, 1990

Dr. Robert F. Karnei, Director
Armed Forces Institute of Pathology
National Museum of Health and Medicine
Armed Forces Institute of Pathology
Washington, D.C. 20306-6000

Re: Request for the Return of Deceased Pawnee Indians To the Pawnee Tribal Government

Dear Dr. Karnei:

I am the President of the Pawnee Tribal Business Council, which is the governing body of the Pawnee Indian Tribe of Oklahoma. Recently, it came to our attention that your museum, formerly known as the Army Medical Museum, procured numerous Pawnee Indian human remains pursuant to the Surgeon General's Order of 1868. It is unclear exactly how many Pawnee remains have come into the possession of your institution over the years or continue under your control at this time; however, I am enclosing recent tribal research on the manner in which six Pawnee crania were obtained, for your review.

This letter is the Pawnee Tribe of Oklahoma's formal request for the return of all Pawnee human remains and funerary objects possessed or procured by your museum. In addition, the Pawnee Tribe also requests your assistance in locating and securing the return of other tribal remains originally procured by or for your institution but now, for whatever reason, may be in the custody of any other institution or institutions. In this latter category, the Tribe holds your institution equally responsible, both legally and morally, for the return of these individuals. Finally, the Tribe wishes to discuss with you the place, manner and date it wishes these dead to be returned.

For your convenience, please be advised that the Pawnee Tribe is represented by legal counsel in this matter: Walter R. Echo-Hawk, Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302; (303) 447-8760. Please direct any questions regarding this request or the legal basis for this request to him. I appreciate your prompt and sensitive cooperation in this matter.

Sincerely,

Robert L. Chapman
President

cc: ✓Walter Echo-Hawk

Report Verifying the Identity of Six Pawnee Scout Crania at the Smithsonian Institution and the National Museum of Health and Medicine

Prepared for

The Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302-6296

James Riding In, ABD
University of California, Los Angeles

3 April 1990

Table of Abbreviations for Citations

AMM	U.S. Army Medical Museum
AR	Accession Records
ARCIA	*Annual Report of the Commissioner of Indian Affairs*
F	Frame/File
LR	Letters Received (Pawnee Agency)
M	Microcopy
NA	National Archives
NAA	National Anthropological Archives
NMHM	National Museum of Health and Medicine
NMNH	National Museum of Natural History
OIA	Office of Indian Affairs
OR	Office of the Registrar
R	Roll/Reel
RMP	Returns from Military Posts (Fort Harker)
SI	Smithsonian Institution

Note: Copies of letters, reports, and other primary source data cited within this report are in the possession of this researcher.

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I. Introduction

Army Medical Museum records contain letters and reports filed in 1869 by B.E. Fryer, the Post Surgeon at Fort Harker, Kansas, which specifically identify six disarticulated crania now housed at two federal agencies in Washington, D.C., as Pawnee. The Smithsonian's National Museum of Natural History (NMNH) holds four of these skulls now catalogued as serial numbers 225092, 225291, 225292, and 243537. The other two crania, numbered 5550 and 5551, are presently at the National Museum of Health and Medicine (NMHM), formerly called the Army Medical Museum (AMM).

NMHM curators have accepted the accuracy of AMM documentation and have agreed to return the two crania in their hands to the Pawnee Tribe upon official request (Paul Sledzik to James Riding In, 10/18/89 and 1/3/90). However, despite Fryer's specificity regarding the tribal affiliation of these crania, several Smithsonian officials have expressed doubts concerning the reliability of this documentation. Referring to the AMM records as being sketchy, ambiguous, and leaving many questions unanswered, Douglas H. Ubelaker, the head of the NMNH's physical anthropology division, wrote: "They [the four crania in question at the NMNH] are inferred to be Pawnee, but according to historic [sic] documents, the Arapaho, Cheyenne, Kiowa, and Sioux were also raiding in the area" (Ubelaker to Roger Echo-Hawk and Riding In, 12/5/89; also see Donald Ortner to Lawrence Goodfox, Jr. 1/25/89).

This use of arguments devised from unspecified historical references to discredit primary data is not only unscholarly but also serves to unnecessarily complicate the Pawnee tribal repatriation effort. While history books do show that several different Indian tribes of the Central Plains attempted to maintain their land base and culture by using military means to resist white American encroachments in the late 1860s, these works generally fail to mention the Mulberry Creek Massacre incident (Nye; Leckie; Garfield), from which the six crania obtained by Fryer had come. In fact, virtually all discourses of nineteenth-century tribal studies, the trans-Mississippi West, and interracial conflict on the Great Plains ignore the Army's inhumane, unethical, as well as immoral policy of using the name of science to loot tribal graves and mutilate Indian bodies found on battlefields.

This report assembles data gleaned from Office of Indian Affairs (OIA) records, Fort Harker post returns, AMM files, and other sources which verify the identity of the six crania acquired by Fryer as Pawnee. Additionally, it presents evidence showing that the dead had previously served in special Army units known as the Pawnee Scouts and were probably members of the Pitahawirata band, one of the four confederated bands of Pawnee.

II. The Pawnee Scouts

Evidence indicates that the Indians killed by U.S. soldiers and Kansas citizens near Mulberry Creek on 29 January 1869 and subsequently decapitated were Pawnee who had been recently discharged from a special Army unit known as the Pawnee Scouts (NA, OIA, M234, LR, F614, Charles Whaley to H.B. Denman, 3/22/69). Although no one recorded the names of the victims or when they served in the Army, this atrocity is nevertheless very important to modern-day Pawnee Indians.

A Brief History of the Pawnee Scouts

During the 1860s and 1870s the Pawnee chieftaincy, headed by Pita-Resaru, Terrekawa, Tirawahut-Resaru, and Retakuts-Resaru, authorized hundreds of their men to enlist in Pawnee Scout units to fight with the U.S. Army against common enemies--the Sioux, Cheyenne, and Arapaho. Although white expansion also endangered their culture and land base, the Pawnee chiefs were unwilling to risk the lives of their men, women, and children in a war against the overwhelming might of the United States. Consequently, they adopted a policy of peaceful coexistence with federal authorities.

With the Civil War in progress at the time of the first enlistment of the Scouts in the summer of 1864, the federal government desperately needed manpower to protect white lives and property from "hostile" Indians. It sought capable fighters with knowledge of the Plains terrain and the indigenous modes of fighting in order to bolster its military effectiveness. Many Pawnee men, whose lives were periodically disrupted by intertribal warfare, possessed these qualifications.

In 1864 the chiefs allowed Major General Samuel Curtis to use eighty Pawnee men in a campaign against the Sioux. In January 1865 Army officers appointed Frank North captain of the Scouts, authorizing him to enlisted one hundred men. The following January North received orders to recruit another fifty men. In March 1867 Major General C.C. Augur commanded North to organize two hundred Pawnee for military duty. North complied with this directive by recruiting fifty men from each band. The Chaui formed Company A, the Pitahawirata Company B, the Skidi Company C, and the Kitkahahki Company D. They spent six months in western Nebraska and eastern Colorado guarding railroad workers. During this outing, they fought a combined party of the Cheyenne and Arapaho. In December the Scouts mustered out at Fort Kearny.

North organized two more Pawnee companies in the spring of 1868. Testimony given by the chiefs stating that the men slaughtered near Mulberry Creek had been recently discharged strongly indicates that the victims may have been part of this enlistment. If so, the Army mustered them out on 1 January 1869. This means that the Mulberry Creek victims died by the hand of the same army for which they had risked their lives less than thirty days earlier. Conceivably, some of the victims may have served in one or more of the previous enlistments. Two more companies were organized during the spring of 1869. At this point the chiefs took steps to stop future enlistments of the Scouts because the federal government refused punish the soldiers and settlers who had killed the Pawnee veterans near Mulberry Creek. Nevertheless, North organized two more companies in the spring of 1870. The last recruitment of Scouts occurred in the summer of 1876, after the Pawnee had left Nebraska to escape growing white pressure and the specter of a racial war with neighboring settlers (Grinnell, 1973).

By most accounts, Pawnee Scouts provided an invaluable service to the American people. While serving in uniform under white officers, the Scouts performed vital military assignments with dignity, honor, and heroism, paving the way for white settlement of the Great Plains. They routinely risked their lives as trackers, railroad guards, scouts, and combatants. The Scouts engaged "hostile" tribes in numerous armed encounters without losing the life of a single man in battle. One Scout, Traveling Bear, received a congressional medal of honor in 1869 for heroism during the Battle of Summit Springs.

According to George B. Grinnell, "They saved hundreds of lives and millions of dollars' worth of property, and in their campaigns wiped out in blood the memory of many an injury done to their race by the Sioux, the Cheyennes, the

Arapahoes, and the Kiowas" (1961; p. 323). Army officials and state legislators also praised the service of these men (Grinnell, 1973).

Contemporary Significance of the Scouts to the Pawnee

Present-day tribal members revere the Scouts. Virtually every living Pawnee can trace their ancestry back to at least one of the hundreds of men who served as Scouts. They sing specially composed songs at tribal war dances to honor them. Many editions of the Pawnee Indian Homecoming brochure contain pictures of Scouts and accounts of their deeds. During the 1970s tribal veterans organized a Pawnee Scout's heritage organization to carry out social and civic functions in the spirit of the Scouts.

The Scouts established a tradition of military service that is carried on today. Hundreds of Pawnee men and women have followed in the footsteps of their ancestors by serving in the armed forces during the nation's times of need. Proudly wearing Army, Navy, Air Force, Coast Guard, and Marine uniforms, they fought bravely in Viet Nam, Korea, World War II, and World War I, as well as the Spanish-American War. Some died while serving their country. Marine PFC Thomas E. Littlesun died on 6 December 1968 in Viet Nam. Another Pawnee, Chief Petty Officer Martin Moshier, Jr., died at sea on 4 November 1970 during the Viet Nam conflict while on a secret mission for the United States Navy.

Five died while in combat during World War II: Eugene Peters, Gareth F. Shaw, George D. Coons, Charles E. Harris, and William Silas Coons. Other Pawnee fighting in this war against global domination suffered grievously. Army sergeant Philip Gover lost an arm while fighting in Europe. Philip Mathews survived the Bataan Death March and several years of captivity. One Pawnee died during World War I.

During these wars, Pawnee servicemen received numerous combat awards, including purple hearts, bronze stars, and distinguished service medals. A War Mothers' association honors their sons who served in the military (Philip Mathews, Jr. to Riding In, 12/11/89).

III. The Mulberry Creek Massacre and Decapitations

Unquestionably, all concerned parties in 1869 knew beyond a reasonable doubt that the Indians slaughtered by soldiers and settlers near Mulberry Creek were Pawnee. Mutually exclusive reports of U.S. Army officers, including those of Fryer, and the Pawnee chiefs, based largely on testimony given by Indian survivors of the attack, confirm the accuracy of AMM files. Fryer used information from a captured Pawnee prisoner as the basis for identifying the six heads he, or others, severed for the AMM.

Army Reports

The 31 January 1869 report of Captain Edward Byrne to Fort Harker's post adjutant states that two days earlier his command, a Tenth Cavalry detachment consisting of about thirty men and five civilians, returned fire from a party of Indians, killing six and wounding one, whom they captured. While in custody, according to the report, the wounded prisoner identified himself as being a Pawnee (NA, OIA, M234, LR, R660, F727). Two civilians who lived near Mulberry Creek used a wagon to transport this injured man to Fort Harker later that day. Arriving at their destination early the following morning, they turned him over to Brevet Brigadier General Alfred Sully (NA, OIA, M234, LR, R660, F727; NA, OIA, M234, LR, R660, F731, Sworn Statement of Charles Martin, 1/30/69; NA, M617, RMP, R453, January Returns, 1869). That same day, Sully, who had probably confirmed the prisoner's tribal origins through interrogation, reported to Departmental Headquarters that: "There is no question of the fact that these Indians were Pawnee in a stealing expedition" (NA, OIA, M234, LR, R660, F727).

Evidence shows that Fort Harker personnel placed the prisoner in the post hospital, presumably under Fryer's care (NA, M617, RMP, R453, January Returns, 1869). At this point the wounded Pawnee mysteriously disappears from the historical record. Further research, however, may divulge his fate.

Reports blaming the Pawnee for starting the trouble near Mulberry Creek reached high-ranking government officials in Washington, D.C. The Department of War used these Army reports, and other allegations of interracial conflict, as a basis for recommending the taking of punitive actions against the Pawnee as a whole. On 18 May Secretary of War J.A. Rawlins wrote the Interior Secretary declaring that a party of Pawnee Indians had been "engaged in plundering the residents of that vicinity [Mulberry Creek] and afterwards fired upon the troops sent in pursuit." Continuing, Rawlins stated that "It is the opinion of the local military officers, concurred in by the General of the Army, that these Indians should not be permitted by their agents to leave their reservation" (NA, OIA, M234, LR, R660, F733). Commissioner of Indian Affairs Ely S. Parker subsequently ordered the Pawnee agent to issues passes to Indians who had to leave the reservation.

Not everyone in the military agreed with this charge, however. An officer who had investigated the Mulberry Creek tragedy told Pawnee Agent Jacob Troth that six Pawnee had been killed "in Kansas without provocation on their part" (*ARCIA*, p. 223). No Army document reporting the findings of this investigation has been located. Further probing of archival files, however, may locate this potentially important document.

Pawnee Testimony

On 22 March Pawnee agent Wheeler informed H.B. Denman, the Superintendent of Indian Affairs, that five Pawnee who had survived the Mulberry Creek attack brought news to their chiefs that nine men in their party had been killed in Kansas by soldiers without provocation. The chiefs also stated that all of the dead had previously served in the U.S. Army as Pawnee Scouts. According to Whaley, the chiefs "feel that a great outrage has been committed against them, and desire that the case may be investigated" (NA, OIA, M234, LR, F614).

This casualty figure articulated by the chiefs differs from those given by military officers. Byrne listed six dead while Fryer enumerated eight. This discrepancy between these Army sources suggests that the survivors, possibly with the help of some other Pawnee in the area, managed to hide several bodies before Byrne's men had compiled an accurate body count. If this was the case, Fryer's estimate is probably more exact. The ninth victim referred to by the survivors and chiefs may have been the wounded prisoner held at Fort Harker. Apparently, they believed that he had died either at the massacre scene or while in captivity.

Pawnee agency personnel subsequently recorded more details regarding the Mulberry Creek killings, including the band affiliation of the victims. On 3 July Pita-Resaru (Pitalesharo), the Chaui head chief, stated: "Our men were killed last winter [in Kansas] when they had done nothing." Similarly, Terrekawa (Ter-re-kah-wah), the head Pitahawirata chief, declared that "some of my relatives killed by white men. Twelve of my relatives were killed in Kansas. We could do nothing about it. If it had been done by Indians we would have had our revenge. But as it was done by white men we did nothing in revenge [and] do not desire to. . . " (NA, OIA, M234, LR, R660, F625, Janney to

Parker, 7/4/69). In this instance, Terrekawa's revised death tally apparently included two Pawnee who were wantonly murdered at Ellsworth, Kansas, on 12 March by a mob of settlers led by several law enforcement officers (NA, OIA, M234, LR, R660, F726, Craig to Walker, 4/5/69; Riding In) and the deaths of several Mulberry Creek Massacre survivors who probably succumbed to lethal effects of severe frostbite suffered while attempting to protect and bury their fallen tribesmen's bodies in late January and early February.

Samuel Janney, the Bureau of Indian Affairs superintendent of several Nebraska reservations, later noted in his *Memoirs* that another Pawnee, Mad Bull, had also suffered the loss of relatives in the Mulberry Creek affair. Accordingly, Mad Bull said that "It was some of my relations that were killed in Kansas last winter. The news has gone to our Great Father long ago, but we hear nothing of it" (p. 267). Additionally, Mrs. Elvira Platt, a teacher at the Pawnee reservation school, learned of the slaughter from Terrekawa. According to her autobiography, this Pitahawirata chief had told her that the whites had massacred a party of their young people who were returning from a trading expedition with a southern tribe (p. 793).

Action taken by the chiefs during the months immediately following the killings illustrates the intensity of their anger regarding these murders. When the federal government refused to compensate them for their loses, the chiefs took steps to stop their men from enlisting into the Army as Pawnee Scouts (NA, OIA, M234, LR, F614, Whaley to Denman, 3/22/69).

This testimony given by the chiefs, military officers, and others demonstrates conclusively that the Indians massacred near Mulberry Creek were indeed Pawnee. From evidence presented by the chiefs, it appears as if the victims were affiliated with the Pitahawirata band and former Pawnee Scouts. Other contemporaneous evidence strongly suggests that the soldiers and settlers killed them without provocation. To the chagrin of the chiefs, federal officials repeatedly denied official tribal requests for justice and compensation.

AMM Evidence

As suggested above, Surgeon Fryer learned of the Mulberry Creek Massacre from the wounded Pawnee held captive at Fort Harker or post officers, or possibly both. Shortly thereafter, Fryer initiated a search for the crania of these dead in behalf of the AMM. On 12 February 1869 he sent a letter to George A. Otis, an AMM curator, detailing the slow progress of this headhunting operation:

> Your letter was received this morning. I had already obtained for the Museum the skull of one of the Pawnees, killed in the fight you speak of, [and] would have had all had it not been that immediately after the engagement the Indians lurked about their dead [and] watched them so closely, that the guide I sent out was unable to secure but the one. Until within a day or two the snow has prevented a further attempt. Yesterday I sent a scout who knows the spot [and] think I can get at least two more of the crania--that number being reported to me as left unburied by the Pawnees, [and] it may be that if the remaining five (eight not seven were killed) are buried or have been hid near where the fight took place--about twenty miles from here--I can, after a time, obtain all. I shall certainly use every effort (SI, NMNH, NAA, AMM, B2, F509-31).

Obviously, Otis had received news of the killings and sent a letter to Fort Harker ordering Fryer to acquire the heads of these dead Pawnee for the AMM.

At that time the AMM was actively acquiring Indian crania for study. To facilitate this ghoulish research, the Surgeon General's office sent a series of memoranda to Army medical officers during 1867 and 1868 commanding them to collect Indian crania from graves and battlefields for the AMM. Like many of his professional colleagues, Otis sought to valid the racist theory that the Anglo-Saxon race possessed a higher level of intelligence than all other peoples of the world by measuring the brain capacity of human skulls. Fryer as well as a host of other Army doctors zealously complied with this directive. Over the next several generations, the AMM received several thousand Indian skulls for use in "scientific" studies of this type (Lamb; Sledzik; SI, NMNH, NAA, AMM, "Master List").

On 11 March Fryer shipped the six Pawnee skulls, along with twenty more from other Plains tribes, to the AMM. In his letter of that date to Otis, Fryer vividly described the condition of the crania severed from the Indians killed near Mulberry Creek. "The ten last on the list," he wrote, "are entirely my own contribution, among which are six Pawnees, four of them excellent specimens, two were injured a good deal by the soldiers who shot into the bodies [and] heads several times after the fight in which these Indians were killed, was ended" (SI, NMNH, NAA, AMM, B2, F509-31).

Fryer's documentation also contains a brief statement indicating where each of the crania was acquired. As Table One shows, two of them came from near Mulberry Creek; one from Ascher Creek near Solomon River; one from the bank of the Salina, 21 miles northwest of Fort Harker; and two others from near Fort Harker. The wide dispersion of these bodies in central Kansas substantiates Fryer's 12 February report that the Pawnee survivors stayed in the area at the conclusion of the killings to protect their dead.

Table One

B.E. Fryer's Record of Sites Where Army Personnel
Found and Decapitated Six Pawnee Bodies in the Winter of 1869

Fryer's Number	Site of Decapitation
21	Ascher Creek, near Solomon River
22	bank of Salina River, 21 miles northwest of Fort Harker
23	near Fort Harker
24	from same place [near Fort Harker]
25	Mulberry Creek, Kansas, 20 miles northwest of Fort Harker
26	killed in same action [20 miles northwest of Fort Harker]

Source:
SI, NMNH, NAA, AMM, B2, F509-31, Fryer to Otis, 2/11/69.

Fryer also gave the skulls an individual identification number, cited their tribal affiliation, and listed their gender. He numbered the Pawnee crania consecutively, 21-26, and listed each of them as "Warriors." AMM personnel subsequently renumbered them: 529; 5550; 530; 531; 550; and 5551, respectively. In 1898 the AMM gave the U.S. National Museum, a Smithsonian subunit, most of its Indian remains "collection," including four of the crania from the Mulberry Creek Massacre. It retained two, those numbered 5550 and 5551, which had both been severely damaged by excessive gunfire. Table Two shows the numbers used by Fryer, the AMM, and the NMNH to identify the six Pawnee crania in question.

Table Two

Numbers Used by Fryer, the AMM, and the NMNH to Identify the Six Pawnee Crania Severed by Army Personnel in the Winter of 1869

Fryer	Army Medical Museum/ National Museum of Health and Medicine	National Museum of Natural History
21	529	225092
22	5550	---
23	530	243537
24	531	225292
25	550	225291
26	5551	---

Sources:

Column 1: SI, NAA, NMNH, AMM, B2, F509-31, Fryer to Otis, 3/11/69.
Column 2: Otis, p. 122.
Column 3. Ubelaker to Echo-Hawk and Riding In, 12/5/1989.

Fryer's classification of these six human crania served as an authoritative basis for future AMM and Smithsonian references to them. For example, Otis, in his *List of Specimens in the Anatomical Section of the United States Army Medical Museum* (1880), enumerated these six Pawnee crania, along with two others, as constituting the entirety of the AMM's "Pawnee collection." Dr. F.V. Hayden provided one of the additions in 1870, a complete female skeleton numbered 778, and Fryer donated the other in 1872, a skull numbered 912.

IV. Conclusion

Historical evidence clearly demonstrates that U.S. soldiers and settlers massacred at least eight Pawnee on 29 January 1869 near Mulberry Creek in Kansas and that Fryer, following an intensive search, obtained six skulls from these dead Indians for the AMM. These sources contain a sufficient number of facts so that a chronology of events related to the killings and decapitations can be reconstructed.

On January 29 a Tenth Cavalry detachment and five settlers attacked a party of fourteen former Pawnee Scouts, who probably belonged to the Pitahawirata band, near Mulberry Creek, killing eight and capturing a wounded Indian. While in custody, this former Scout told his captors the tribal affiliation of himself and his party. Five other Pawnee who had survived the carnage, possibly along with several of their tribesmen in the area, buried their dead within a wide area of central Kansas. Later, they returned home and informed their chiefs of the massacre.

Surgeon Fryer learned specific details about the killings on or about 30 January from either post officers or the wounded prisoner held captive in Fort Harker's post hospital, or both. At this juncture, Fryer, in accordance with several directives issued by the Surgeon General's office, employed a civilian scout to recover as many heads as possible from the dead Indians. Because some Pawnee remained in the area, this individual managed to sever only one skull from an unburied body discovered at the massacre scene. Cold weather delayed headhunting operations until about 11 February. Over the next several weeks, the searchers, possibly including Fryer himself, found five more Pawnee bodies and decapitated them. On 11 March Fryer labeled these crania as "Pawnee Warriors," gave each of them individual identification number, and shipped them, along with twenty crania from other Indian tribes, to the AMM.

In 1898 the AMM transferred over two thousand Indian crania to the U.S. National Museum, a bureau of the Smithsonian Institution. Included with this transaction were four Pawnee crania from the Mulberry Creek Massacre. The AMM retained two of them, the ones damaged by gunshots. Today, these six Pawnee crania are still curated by both of these federal entities, the NMNH and NMHM.

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AMERICAN INDIAN RELIGIOUS FREEDOM ACT REPORT

P.L. 95-341

FEDERAL AGENCIES TASK FORCE
Chairman, Cecil D. Andrus, Secretary of the Interior

August 1979

March 3, 1849

U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C. 20240

III. RECOMMENDATIONS

E. Sacred Objects - Museums

1. Background - Statement of Issues

Equally elaborate concepts of personal property have developed in both Native American and western legal traditions. The problems presented by the presence of Native American sacred objects in museums will be resolved only through careful determinations of what constitutes essential fairness in these conflicts between culturally distinct systems.

Sacred objects and their proper care and treatment vary from tribe to tribe. Some sacred objects are wrapped bundles containing hundreds of articles, others are distinctly shaped rocks or carefully prepared ceremonial clothing. The care of the sacred object may involve, for example, a simple ritual before or after its use, periodic offerings of tobacco or cedar, or intricate restrictions upon what actions are allowed in the physical presence of the object.

Often the Native American equivalent of legal ownership is reserved in the tribe or group as a whole and the interest of the individual owner or keeper resembles physical custody. This is especially evident of those sacred objects used in ceremonies participated in by the tribe or group as a whole. It is also evident of those sacred objects whose use is an integral component of a tribal ceremonial cycle. In most cases, Native Americans never envisioned any separation of these objects from the tribe or group.

Many sacred objects exist, and the proper care, treatment and disposition of each object is contained in the tribal customary laws. Classification of sacred objects by type is best done according to each tribe's particular distinctions, but under most systems it seems probable that the vast majority of items in museums are not of current significance in the practice of the Native religion. Significant items may vary widely but will most probably include:

1) Sacred objects which serve a continuing religious function, for example, objects whose presence serves as a guard or protection for land;

2) Sacred objects whose proper disposition according to tribal customary law was disturbed, for example, sun dance offerings, which are properly supposed to be allowed to disintegrate;

3) Sacred objects which were illegally "converted" under tribal customary law, for example, some pipe bundles are not to be transferred outside of the family, group or tribe.

The consequences to the tribe or group of the absence or mistreatment of a particular object may be such that the free exercise of the Native religion is severely restricted. Each case presented by practitioners of Native American religions seeking proper treatment or return of sacred objects must be considered with proper understanding and circumspection.

2. Identification of Problems - Response

The problems experienced by Native Americans in the use and possession of sacred objects which are controlled by federal and public museums are best examined within the context of acquisition methods and related laws and regulations.

Museum accession records show that some sacred objects were sold by their original Native owner or owners. In many instances, however, the chain of title does not lead to the original owners. Some religious property left original ownership during military confrontations, was included in the spoils of war and eventually fell to the control of museums. Also in times past, sacred objects were lost by Native owners as a result of less violent pressures exerted by federally-sponsored missionaries and Indian agents.

Most sacred objects were stolen from their original Native owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object.

Today in many parts of the country, it is common for "pot hunters" to enter Indian and public lands for the purpose of illegally expropriating sacred objects. Interstate trafficking in and exporting of such property flourishes, with some of these sacred objects eventually entering into the possession of museums.

Many sacred objects are taken from Native graves located on Indian and public lands and donated to museums by persons possessing federal permits under 16 USC 432. By statute, all such gathering is undertaken for permanent preservation in public museums. No provision exists in 16 USC 432 and 43 CFR Part 3 for Native use and possession of sacred objects taken in this manner. (Problems related to the protection of Native sacred sites and cemeteries are contained in Part C of this Report.)

Once museums obtain possession of sacred objects, Native Americans have little legal ground for recovery for religious use. For the most part, the museums have ignored the requests of numerous tribes and Native religious groups for return of their sacred objects. One recent exception is the Denver Art Museum's return to the Zuni bow priests of a war god (a hayuta), which was stolen from them and later donated to the museum. At present, the Pueblo of Zuni is negotiating with the Smithsonian Institution for the return of another war god. While there have been other returns - kiva masks to Hopi elders by the Heard Museum, and the 1977 Wheelwright Museum return of 11 medicine bundles to Navajo medicine men - these examples are the exception.

Many problems related to museum possession of Native sacred objects are based upon the manner of display, handling, care and treatment of the objects. Many of the tribal and/or religious groups wish the return of their objects, while others may wish only to work with museums to assure against desecration of the objects.

The museums of the Departments of the Army, Navy and Air Force are presently reviewing their holdings for any object that may be of religious significance to practitioners of Native American traditional religions. Should any such objects be identified, the appropriate Native religious leaders will be notified and invited to discuss its return, long-term loan and/or care and handling.

The Institute of Museum Services (IMS-DHEW), which funds private museums and institutions, has suggested that a survey be conducted to determine the extent of museum holdings nationwide that would be claimed by Native American religious leaders. IMS proposes that the assessment should be conducted in light of the following issues: legality of claim to specific artifacts; method of resolving conflicting claims; and the consequences of establishing a precedent of returning a part of museum collections to the original owners.

An excellent example of federal/tribal/institutional cooperation on the removal and disposition of tribal heritage material can be found in the Ozette Archaeological Project. When an important archaeological site was discovered on the Makah Indian Reservation on the Washington coast, the Makah people were divided on the issue of permitting excavation. Tribal members were eager to learn more about their tribal history but feared the religious implications of the disturbance of this ancient site.

The Makah Tribal Council and Washington State University professors worked out an agreement to ensure that the sanctity of the site would be protected, that the participation of the Tribe in decisions regarding the project would be guaranteed and that the artifacts and other materials would remain in the possession of the Tribe.

To honor the agreement's final provision, the Tribe and University worked together to solicit funds for a major museum on the Makah Reservation. The museum building was funded by the Environmental Protection Agency. The National Endowment for the Arts and the Crown Zellerbach Foundation contributed funds for the displays, and the National Endowment for the Humanities funded a language program which is run through the museum.

The project was conducted with respect for the Makah traditional beliefs and needs, to the benefit of all participants. The Makah Museum, which opened on June 2, 1979, provides housing for the artifacts and jobs for the people. The Makah people have learned more about their past from this unique site and have the tangible evidence of their rich heritage.

3. Statutory Authorities for Administrative Action

a. The following statutes provide authority to prohibit the removal of Native traditional sacred objects from Native American possession and from public and Indian lands, and to assure Native use and possession of sacred objects necessary for the exercise of traditional rites and ceremonies:

i. 16 USC 433 (prohibits excavation and removal of any objects of antiquity located on lands owned or controlled by the United States government)

ii. 16 USC 432 (requires federal permits for excavation and removal of antiquities located on lands owned or controlled by the United States under uniform administrative rules)

iii. 18 USC 1163 (a criminal offense to steal or possess stolen property belonging to any Indian tribal organization)

b. The following statutory authorities empower federal funding authorities to protect Native religious freedom against infringement by museums which receive federal funds.

i. 42 USC 2000a (all persons shall enjoy full and equal enjoyment of facilities, privileges and advantages in any place of public accommodation or place of exhibition or entertainment without being discriminated against on religious grounds)

ii. 42 USC 2000d (no person may be denied the benefits of or be subjected to discrimination under any program or activity receiving federal funds)

iii. 42 USC 2000d-1 (requires all federal departments and agencies which are empowered to make federal grants to effectuate 2000d by rules, regulations and orders, which may be enforced by the termination of or refusal to grant federal funds)

iv. 20 USC 965 (empowers the Director of the Institute of Museum Services to make federal grants to museums)

v. 20 USC 954(g) 956)c) (empowers the National Foundations of the Arts and Humanities to grant federal financial assistance to museums)

vi. 20 USC 65a(a) (authorizes the Director of the National Museum under the direction of the Secretary of the Smithsonian Institution to provide federal financial and other assistance to museums and educational institutions)

4. Task Force Recommendations for Uniform Administrative Procedure

The Task Force recommends a number of administrative actions that can be taken to solve some of the problems experienced by Native Americans in this area:

a. Federal museums should decline to acquire for their collections objects known to be of current religious significance to American Indian, Aleut, Eskimo or Native Hawaiian traditional religions, and should inform such Native American tribal and religious leaders of the presence on the market or in non-Native hands of such objects as come to their attention.

b. Federal museums should return to the tribe of origin objects in the museum's possession, as to which unconsenting third parties assert no ownership interest, that were used or valued for religious purposes at the time of their loss from an American Indian tribe or Native American community, and were alienated from that community contrary to standards for disposition of such objects then prevailing in that community, provided that the successor or modern tribe or community requests them as needed for current religious practice.

c. Federal museums should consult traditional Native religious leaders for guidance as to the museums' practices regarding exhibition and labeling, conservation, and storage of Indian, Eskimo, Aleut and Hawaiian sacred objects in their possession.

d. Federal museums should facilitate periodic ritual treatment by appropriate religious practitioners of sacred objects in their possession, at the request of such practitioners.

5. Recommendations for Congressional Consideration

The Task Force has developed legislative recommendations concerning theft or other unauthorized removal from Indian or Eskimo lands of objects of current religious significance to occupants of those lands; the export of important items of the Native American patrimony, sacred and other; the interstate transport or receipt of stolen Native American religious items; and the intentional conversion, theft, sale and possession of sacred objects belonging to Native Americans not presently protected by 18 USC 1163. Those recommendations are currently being reviewed within the Administration.

The Administration continues to recommend enactment of S.490 or H.R.1825, similar proposals entitled, "Archaeological Resources Protection Act of 1979," with the amendments offered in the Administration's reports on these bills.

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TVA Collection of Native
Remains

	Time Period/ Tribal Association	Number
McClung Museum University of Tennessee - Knoxville	Archaic	670
	Early/Middle Woodland	274
	Late Woodland - Early Mississippian	653
	Late Mississippian	3,421
	Cherokee	1
	Indeterminate	24
Department of Anthropology University of Tennessee - Knoxville	Archaic	16
	Early/Middle Woodland	150
State of Tennessee Tennessee Division of Archaeology	Archaic/Woodland	88
	Mississippian	6
Division of Archaeology University of Alabama - Tuscaloosa	Archaic	1,586
	Woodland	733
	Mississippian	1,430
	Creek	51
	Indeterminate	119

NATIVE AMERICAN HUMAN REMAINS IN THE NATIONAL PARK SERVICE
A PRELIMINARY SURVEY--AUGUST 1988 (UPDATED FEBRUARY 1990)
Note: This list is only an ESTIMATE of
numbers and probable affiliation, if known.

NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
**		
* ****** ALASKA REGION		
CAPE KRUSENSTERN NATIONAL MONUMENT	20	INUPIAT
GLACIER BAY NATIONAL PARK	1	PREHISTORIC TLINGIT
KATMAI NATIONAL PARK AND PRESERVE	22	YUPIK AND ALEUT
KOBUK VALLEY NATIONAL PARK	2	INUPIAT, ONE MAY BE PREHISTORIC ATHABASCAN
SITKA NATIONAL HISTORICAL PARK	1	TLINGIT, ON LOAN TO PARK
* Subsubtotal *	46	
* ****** MID-ATLANTIC REGION		
COLONIAL NATIONAL HISTORICAL PARK	10	17TH CENTURY, ONE COMPLETE, REST FRAGMENTARY POWHATAN TRIBAL GROUP
DELAWARE WATER GAP NATIONAL REC. AREA	30	DELAWARE--IN UNCATALOGED COLLECTION IN UNIVERSITY, ESTIMATE
* Subsubtotal *	40	
* ****** MIDWEST REGION		
AGATE FOSSIL BEDS NATIONAL MONUMENT	6	UNKNOWN, 18-19TH CENTURY ONE CHILD, FIVE CRANIA NOT ARCHEOLOGICALLY RECOVERED BY NPS
AGATE FOSSIL BEDS NATIONAL MONUMENT	1	CLALLAM, 18-19TH CENTURY ONE CRANIUM, FROM BRITISH COLUMBIA NOT ARCHEOLOGICALLY RECOVERED BY NPS
EFFIGY MOUNDS NATIONAL MONUMENT ,	0	WOODLAND (100 BC - 600 AD) 40 FRAGMENTS, CREMATION ASHES AND SKELETAL FRAGMENTS
MOUND CITY GROUP NATIONAL MONUMENT	37	HOPEWELLIAN PERIOD (200 BC - 500 AD) CREMATION ASHES & SKELETAL FRAGMENTS
MOUND CITY GROUP NATIONAL MONUMENT	42	HOPEWELLIAN PERIOD (200 BC - 500 AD) INHUMATIONS
MOUND CITY GROUP NATIONAL MONUMENT	10	HOPEWELLIAN PERIOD (200 BC - 500 AD) INHUMATIONS, PROBABLE HUMAN ORIGIN
MOUND CITY GROUP NATIONAL MONUMENT	167	HOPEWELLIAN PERIOD (200 BC - 500 AD) INHUMATIONS, POSSIBLE HUMAN ORIGIN

Note: Only probable cultural affiliation, if known, is listed. If a probable contemporary Native American association is known, it is given. If no contemporary association is known, then an archeological designation for the prehistoric or historic culture is used, if known.

NATIVE AMERICAN HUMAN REMAINS IN THE NATIONAL PARK SERVICE
A PRELIMINARY SURVEY--AUGUST 1988 (UPDATED FEBRUARY 1990)
Note: This list is only an ESTIMATE of
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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
SCOTTS BLUFF NATIONAL MONUMENT	3	UNKNOWN (MAY NOT BE NATIVE AMERICAN) 2-3 INDIVIDUALS NOT ARCHEOLOGICALLY RECOVERED BY NPS
* Subsubtotal *	266	
* ****** NATIONAL CAPITAL REGION		
FORT WASHINGTON PARK	0	UNKNOWN--524 FRAGMENTS (MAY NOT BE NATIVE AMERICAN)
* Subsubtotal *	0	
* ****** NORTH ATLANTIC REGION		
ACADIA NATIONAL PARK	5	PREHISTORIC, STORED AT UNIVERSITY OF MAINE, ORONO
ELLIS ISLAND	3	PREHISTORIC (2 FEMALE, 1 MALE) CURRENTLY WORKING WITH DELAWARE INDIANS REGARDING THESE REMAINS
* Subsubtotal *	8	
* ****** PACIFIC NORTHWEST REGION		
FORT VANCOUVER NATIONAL HISTORIC SITE	14	CHINOOK (12), CLATSOP (2)
WHITMAN MISSION NATIONAL HISTORIC SITE	3	CAYUSE CREMATIONS FROM PAO PAO MOX MOX VILLAGE
* Subsubtotal *	17	
* ****** ROCKY MOUNTAIN REGION		
BADLANDS NATIONAL PARK	1	UNKNOWN
BENTS OLD FORT NATIONAL HISTORIC SITE	2	UNKNOWN
CANYONLANDS NATIONAL PARK	1	ANASAZI
DINOSAUR NATIONAL MONUMENT	3	FREMONT
FORT UNION TRADING POST NATIONAL HISTORIC SITE	4	UNKNOWN
GLEN CANYON NATIONAL RECREATION AREA	1	ANASAZI
GRANT-KOHRS RANCH NATIONAL HISTORIC SITE	1	UNKNOWN

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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
HOVENWEEP NATIONAL MONUMENT	3	ANASAZI
KNIFE RIVER INDIAN VILLAGE NHS	0	30 SMALL BONE FRAGMENTS PROBABLY HUMAN AND NATIVE AMERICAN
MESA VERDE NATIONAL PARK	606	ANASAZI--BETWEEN 10,000 AND 20,000 ADDITIONAL BONE FRAGMENTS NOT IDENTIFIABLE AS INDIVIDUALS
MESA VERDE NATIONAL PARK	300	PLUS ESTIMATED 3,000 FRAGMENTS, ANASAZI, ON LOAN FROM UTE MOUNTAIN UTE TRIBE FROM UTE MOUNTAIN UTE RESERVATION
NATURAL BRIDGE NATIONAL MONUMENT	1	ANASAZI
PIPE SPRING NATIONAL MONUMENT	2	ANASAZI ADDITIONAL 5 BONE FRAGMENTS
YELLOWSTONE NATIONAL PARK	4	UNKNOWN
ZION NATIONAL PARK	4	ANASAZI
* Subsubtotal *	933	
* ****** SOUTHEAST REGION		
NATCHEZ TRACE PARKWAY	102	CHOCTAW OR CREEK
OCMULGEE NATIONAL MONUMENT	102	MISSISSIPPIAN (POSSIBLE CREEK AFFILIATION)
RUSSELL CAVE NATIONAL MONUMENT	2	ARCHAIC
* Subsubtotal *	206	
* ****** SOUTHWEST REGION		
AMISTAD RECREATION AREA	29	PREHISTORIC UNKNOWN (UNANALYZED)
AZTEC RUINS NATIONAL MONUMENT	2	ANASAZI OR NAVAJO
BANDELIER NATIONAL MONUMENT	30	ANASAZI OR PUEBLO
CANYON DE CHELLY NATIONAL MONUMENT	5	ANASAZI OR NAVAJO
CHACO CULTURE NATIONAL HISTORICAL PARK	3	ANASAZI
CHACO CULTURE REPOSITORY IN ALBUQUERQUE	70	ANASAZI

NATIVE AMERICAN HUMAN REMAINS IN THE NATIONAL PARK SERVICE
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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
FORT UNION NATIONAL MONUMENT	4	HISTORIC BURIALS--UNKNOWN
HUBBELL TRADING POST NATIONAL HISTORIC SITE	4	ANASAZI OR NAVAJO
JEAN LAFITTE NATL HIST PARK AND PRESERVE	1	UNKNOWN
LAKE MEREDITH RECREATION AREA	12	PREHISTORIC
NAVAJO NATIONAL MONUMENT	24	ANASAZI (?) AN ESTIMATED 20 ON LOAN TO MUSEUM OF NORTHERN ARIZONA
PADRE ISLAND NATIONAL SEASHORE	1	PREHISTORIC KARANKAWA
PECOS NATIONAL MONUMENT	5	ANASAZI
SAN ANTONIO MISSIONS NATIONAL HISTORIC SITE	1	HISTORIC-UNKNOWN
WUPATKI NATIONAL MONUMENT	42	ANASAZI (?) AN ESTIMATED 40 ON LOAN TO MUSEUM OF NORTHERN ARIZONA
* Subsubtotal *	233	
* ****** WESTERN REGION		
DEATH VALLEY NATIONAL MONUMENT	27	PANAMINT SHOSHONE (?)
GRAND CANYON NATIONAL PARK	20	KAYENTA, ANASAZI, BASKETMAKER, NAVAJO, AND UNKNOWN
JOSHUA TREE NATIONAL MONUMENT	12	CHEMEHUEVI, OR CAHUILLA, OR SERRANO, OR MOJAVE
LASSEN VOLCANIC NATIONAL PARK	4	ACHUMAWI/PITT RIVER TO BE REBURIED AFTER STUDY NOT FROM WITHIN PARK BOUNDARY
POINT REYES NATIONAL SEASHORE	12	COAST MIWOK
PU'UHONUA O HONAUNAU NATIONAL HIST. PARK	150	REMAINS FROM PU'UHONUA O HONAUNAU NHP, HAWAII VOLCANOES NP,KALOKO-HONOKOHAU NHS. REMAINS LOCATED IN A LAVA TUBE THAT HAS BEEN BLESSED & CONSECRATED BY ALL OF THE MAJOR RELIGIOUS GROUPS INCLUDING NATIVE HAWAIIANS
SEQUOIA & KINGS CANYON NATIONAL PARK	123	WESTERN MONO OR WESTERN MONACHE

NATIVE AMERICAN HUMAN REMAINS IN THE NATIONAL PARK SERVICE
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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
YOSEMITE NATIONAL PARK	3	UNKNOWN
* Subsubtotal *	351	
** Subtotal **	2100	

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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
** MIDWEST ARCHEOLOGICAL CENTER		
* ****** MIDWEST REGION		
EFFIGY MOUNDS NATIONAL MONUMENT	1	WOODLAND (1200 AD) ONE "BUNDLE" BURIAL, MAY REPRESENT MORE THAN ONE INDIVIDUAL
ISLE ROYALE NATIONAL PARK	5	PREHISTORIC 50 FRAGMENTS, ESTIMATED 5 INDIVIDUALS
OZARK NATIONAL SCENIC RIVERWAY	4	MISSISSIPPIAN (1000 AD) ONE PARTIAL BURIAL, 4 ISOLATED FRAGMENTS
SMITHSONIAN COLLECTION	4	UNKNOWN--SMITHSONIAN MATERIAL FROM NON-NPS LANDS, SOUTH DAKOTA, ON LOAN FOR STORAGE
VOYAGEURS NATIONAL PARK	4	UNKNOWN ONE INCOMPLETE "BUNDLE" BURIAL
* Subsubtotal *	18	
** Subtotal **	18	

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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
** WESTERN ARCHEOLOGICAL AND CONSERVATION CENTER		
* ****** NON-NPS COLLECTIONS AT WACC		
BUREAU OF INDIAN AFFAIRS	10	SAN CARLOS APACHE BUREAU OF INDIAN AFFAIRS COLLECTION ON LOAN FOR STORAGE (NON-NPS)
BUREAU OF INDIAN AFFAIRS	10	TOHONO O'ODHAM BUREAU OF INDIAN AFFAIRS COLLECTION ON LOAN FOR STORAGE (NON-NPS)
BUREAU OF INDIAN AFFAIRS	80	ZUNI BUREAU OF INDIAN AFFAIRS COLLECTION ON LOAN FOR STORAGE (NON-NPS)
* Subsubtotal *	100	
* ****** NPS COLLECTIONS AT WACC	1321	BREAKDOWN BY PARK IS NOT AVAILABLE AT THIS TIME. REMAINS ARE FROM THE PARK UNITS LISTED
* Subsubtotal *	1321	
* ****** SOUTHWEST REGION		
AZTEC RUINS NATIONAL MONUMENT		
BANDELIER NATIONAL MONUMENT		
CANYON DE CHELLY NATIONAL MONUMENT		
CHACO CULTURE NATIONAL HISTORICAL PARK		
EL MORRO NATIONAL MONUMENT		
GILA CLIFF DWELLINGS NATIONAL MONUMENT		
GUADALUPE MOUNTAINS NATIONAL PARK		
LAKE MEAD NATIONAL RECREATION AREA		
NAVAJO NATIONAL MONUMENT		
PECOS NATIONAL MONUMENT		
SALINAS NATIONAL MONUMENT		

NATIVE AMERICAN HUMAN REMAINS IN THE NATIONAL PARK SERVICE
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NATIONAL PARK SERVICE UNIT	INDIVIDUALS REPRESENTED BY REMAINS	CULTURAL AFFILIATION AND COMMENTS
WUPATKI NATIONAL MONUMENT		
* Subsubtotal *		
* ****** WESTERN REGION		
CASA GRANDE NATIONAL MONUMENT		
FORT BOWIE NATIONAL HISTORIC SITE		
GRAND CANYON NATIONAL PARK		
GREAT BASIN NATIONAL PARK		
JOSHUA TREE NATIONAL MONUMENT		
MONTEZUMA CASTLE NATIONAL MONUMENT		
ORGAN PIPE CACTUS NATIONAL MONUMENT		
PETRIFIED FOREST NATIONAL PARK		
SAGUARO NATIONAL MONUMENT		
TONTO NATIONAL MONUMENT		
TUMACACORI NATIONAL MONUMENT		
TUZIGOOT NATIONAL MONUMENT		
WALNUT CANYON NATIONAL MONUMENT		
WESTERN ARCH & CONS CENTER COLLECTION		
* Subsubtotal *		
** Subtotal **	1421	
*** Total ***	3539	

MEMORANDUM

TO: Walter Echo-Hawk

FROM: Jo Wilkerson

DATE: March 26, 1990

RE: State-to-state Survey of Required Burial, Desecration of Burial, Corpse Abuse and Cemetery Protection Laws

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Every state has comprehensive legislation pertaining to the decent and proper treatment of the dead, of their sanctuary and the entitlement of all human beings who die within the state to a decent and proper burial. Following the narrative is a list of sample provisions from each state.

Nearly every state has adopted provisions contained in the Uniform Anatomical Gift Act. A few samples of these are provided in the initial states listed below. Generally the states' versions resemble one another, each providing for careful controls over the granting of gifts and requiring the proper consent of the donor.

Most states provide for the perpetual care of old or abandoned cemeteries. Again, a few are included, but for the purpose of limiting the tremendous volume of material involved, most have been omitted. These too are quite similar in their provisions.

For reference, the initials AGA (anatomical gift act) and PCF (perpetual care fund) have been provided at the beginning of those synopses for states which have these provisions, although the materials themselves may or may not be included in the xerox collection.

In addition, all states make very similar provisions for consent to autopsies and the careful regulation of other duties of coroners and medical examiners, and for the special memorial care and burial provisions of veterans.

Finally, nearly every state provides for the right of an individual to have his body disposed of as he wishes, although these provisions may not always appear alongside provisions for scientific or medical use in the xerox materials.

Only a few of these have been included in the materials. Most of these provisions are not mentioned in the synopses unless unusual, and the omission of these in the xerox material after the first few states should not be taken to indicate their absence.

ALABAMA (AGA)

Alabama law requires the removal and reinterment of human remains in the case of an abandoned suitable cemetery, and the notification of relatives and publication of notice of the removal, sec 11-47-60, et seq.; regulates the transportation of dead bodies, § 22-19-1; requires permits for burial and removal, § 22-19-3; provides for the burial of impoverished or unclaimed inmates, prisoners, patients and unidentified bodies at public expense, § 22-19-22, et seq.; requires the proper burial of bodies after use by schools, § 22-19-27; includes extensive regulation of all these activities, and provides penalty for violation, § 22-19-30. In addition, the statute restricts the purposes of the taking of samples by coroners in autopsies, § 22-19-80; outlaws the desecration of venerated objects including places of burial, § 13A-11-12 (a)(1); and the abuse of corpses, § 13A-11-13.

ALASKA

Alaska provides for the payment of all related costs by the Department of Social Services, and for the proper burial for any person unable to pay for the burial, § 12.65.025. The Alaska Historic Preservation Act provides for the location, preservation, study and exhibit of all historic, prehistoric and archeological resources, the title to which it reserves to itself, without diminishment of the cultural rights and responsibilities of persons of aboriginal descent to obtain those resources, for "study or display," § 41.35.010, et seq. The Act also makes it unlawful to disturb any historic, prehistoric or archeological resources without following specific procedures, or to disturb or remove any gravesite or grave monument, even though abandoned, § 41.35.200.

ARIZONA (AGA)

Arizona law provides for specific procedures for vacating cemeteries, including notice to relatives, and the removal and relocation in a proper cemetery of all unclaimed remains, § 9-451; the burial of bodies at public expense, including indigent patients, §§ 11-303, 36-804; the duty of the proper disposal of bodies by burial in all other situations, § 36-831. In addition, it makes criminal the mutilation or disinterment of the dead, § 36-861; the removal of bodies with malicious intent, § 36-862; and the defacing of any cemetery, mortuary, or any facility used for the purpose of memorializing the dead, § 13-1604. Archeological sites are protected under § 41-841, et seq.

ARKANSAS (AGA) (PCF)

Arkansas statute criminalizes the abuse of a corpse, § 5-60-101' the proper burial of unclaimed bodies after use by the University of Arkansas, § 20-17-708; and the removal and relocation of remains in a proper cemetery, after notice, upon abandonment of a cemetery, § 20-17-905. State law also criminalizes mining from beneath any cemetery, § 5-39-211, and placing unsightly debris in or taking markers from any cemetery, § 5-39-212.

CALIFORNIA (AGA)

California law prohibits the mutilation, disturbance, or removal of human remains from any location other than a cemetery; outlaws the disturbance of remains discovered outside of any cemetery and requires investigation by a coroner in such a case, § 7050.5.; and prohibits deposit of human remains anywhere not a cemetery, § 7054.1. If the remains are recognized as Native American, notification of the Native American Heritage Commission is required. Id. In addition, the removal of any human remains whether before or prior to burial with the intent to sell or dissect without authority is criminal under § 7051. Where no person can be found to take responsibility for the proper burial of remains, § 7100, the duty devolves upon the coroner for indigent dead, the costs to be born by the county, § 7104.

COLORADO

Colorado law dictates the handling of all unclaimed bodies be through the state board convened for that purpose, whose duties are the provision of notice as to the bodies, § 12-34-203; the disposition of the bodies of known persons according to their wishes, § 12-34-204; and the proper burial or cremation of the remains when scientific use is complete, § 12-34-207. Also unlawful is the abuse of a corpse, whether it be removal from grave or sepulcher without proper consent, or outrageous treatment of the corpse, § 18-13-101. The county in which the deceased indigent or recipient of public assistance or medical assistance resided shall pay funeral expenses, § 26-2-129. The removal of abandoned cemeteries in danger of being desecrated is authorized in § 25-1-655. Notice of the removal is required under § 25-1-656, and §§ 25-1-658 requires reinterment in another cemetery.

CONNECTICUT (AGA)

The disinterment of bodies, opening of graves or moving of bodies from one town to another without a permit and proper purpose is unlawful under § 7-67, et seq. Careful records of such permits are kept, § 7-72. The town in which patients of humane institutions die, or bodies of indigent persons are found, is responsible for their proper burial, § 17-286. The warden is responsible for the proper burial of executed criminals under § 54-102. The malicious injury to or removal of property in cemeteries, and improper disinterment of any corpse without proper consent or authorization are unlawful, §§ 53-335, 53-336. The proper disposition of human bodies after scientific use is complete is required under § 19a-283.

DELAWARE

Delaware law provides for the burial of indigent person at public expense, 31 § 110. Permits are required for interment, removal or other disposition, 16 § 3151. The knowing transportation or acceptance of dead bodies without proper permit is unlawful under 16 § 3152, et seq. The disinterment in the case of condemned land is accompanied by reinterment 16, § 3159. Abuse of a corpse and desecration of any monument are made criminal in 11 §§ 1331, 1332. The burial of unclaimed bodies or of indigent persons is provided for by the state under 29 § 4711.

DISTRICT OF COLUMBIA

D.C. statutes provide for the control of unclaimed dead, § 2-1401. This body is to provide notice of such bodies, § 2-1403, and inter bodies not distributed to medical institutions, who themselves become responsible for the eventual proper burial of the bodies, § 2-1405. The procurement of bodies or their disturbance without permit if unlawful, § 2-1406. Failure to perform the above duties is criminal under §§ 2-1408, 2-1409. Trafficking in human body parts is unlawful under § 6-2601; as is grave-robbing, § 22-3103; and destruction of tombs, § 22-3114. Cemetery corporations are to reserve a sufficient portion of lots for the burial of strangers and indigents, § 27-102, and permits for the interment, disinterment or other disposition of the dead are required, § 27-119. Burial is prohibited anywhere other than a recognized burial ground, § 27-121, and must be proper and according to specification, § 27-122. Reopening of graves is prohibited unless unusual circumstances, § 27-123, and penalties and prosecution are provided under §§ 27-126, 27-127.

FLORIDA

Florida law requires a permit for burial, disinterment, reinterment or transit of human bodies, § 382.061. The Florida statutes contain an excellent example of a typical cemetery act, §§ 497.001, et seq., outlining the specifications of the operation of a cemetery company. Abandoned cemeteries of more than fifty years' nonuse are posted for 120 days, thereafter unused plots are sold to pay for the perpetual maintenance of the remainder, §§ 497.071, 497.072. Trafficking in dead bodies or parts thereof is criminal under §§ 872.01 and 873.01, as is disfiguring a tomb, its contents or its surroundings, § 872.02. Cremation under 48 hours after death is prohibited, § 872.03. The accidental discovery of an unmarked human burial requires that any excavation stop and a medical examiner be notified, who assumes jurisdiction over any individual dead less than 75 years, otherwise he is to inform the State Archaeologist, who is to notify identified kinship community members in order to "determin[e] the proper disposition of the remains" and appropriate display of human remains and artifacts, § 872.05. The deliberate disturbance of state archaeological sites is prohibited under § 267.13.

GEORGIA (PCF)

Trafficking in human bodies or parts thereof is prohibited under §§ 16-12-160, 31-21-41; as is disposition, disinterment or reinterment without a permit, § 31-10-20; or disinterment by a coroner without good grounds, § 31-21-42; or disinterment for purposes of sale or dissection, § 31-21-43. Wanton or malicious removal of body or disturbance of the contents of a grave are felonies under § 31-21-44. Unclaimed bodies and travelers dying suddenly are handled by a designated board, §§ 31-21-20, 31-21-21, 31-21-22, strictly for scientific purposes, with prison inmates buried at the public expense (see 1965-66 Op.Att'y Gen. No 66-84). Deceased inmates and indigents are to be buried by the county, § 36-12-5. Disturbing known burial places is prohibited, § 36-60-6. Abandoned cemeteries are protected and preserved, § 36-60-6.1, with no disturbance of cemetery property permitted without notice, a public hearing and a "core or sound test" to determine that a lot contains no remains, § 44-5-211.

HAWAII (PCF)

The desecration of a place of burial is prohibited, § 711-1107. The final disposition by proper cremation is required of bodies used for medical education, unless the deceased was a veteran, in which case the body is to be buried,

§ 327-33. Receipt of consideration for delivery of a body is prohibited, § 327-38. Public assistance recipients and unclaimed corpses are to be buried by the department of social services, § 346-15. Burial of indigents is a state responsibility, § 27-1. Dissolution of a cemetery authority does not affect the dedication of property to cemetery purposes, § 441-4, unless and until the dedication is removed, § 441-15, requiring proper removal of interred remains.

IDAHO

Desecration of any grave, cemetery, headstone or place of burial is prohibited, § 18-7027, as is the unlawful removal of human remains with malice or the intent to sell, § 18-7028. Any disturbance, be it through construction, logging, mining, etc. which injures a gravesite, and the public display of remains or artifacts, are prohibited, § 27-502. Disinterment must be done by permit and with good cause, § 39-269. Permits are required for transportation of the dead, § 54-1120. Removal of the grave to protect it is allowed with notification and supervision of the involved Indian tribe under § 27-503. Civil and criminal penalties are provided under § 27-504. Unclaimed bodies are to be decently interred by the coroner, § 31-2802, who must deliver property of the deceased to the county treasurer under § 31-2803. The county poor are to be buried by the coroner and paid for by the county, § 31-1505.

ILLINOIS

The removal and reinterment of all remains is required before a cemetery is formally abandoned under 21, § 2. The destruction or mutilation of any tomb, contents or surroundings is prohibited, 21 § 15. Neglected graves are to be restored and cared for by the county, 21 §§ 61, 62, 62a. Disposition of remains is allowed only with proper purpose and permit, 1111/2 ¶ 73-21, § 21. The use of bodies of indigents from prisons, hospitals, and other institutions where they are to be buried at the public expense can be used for medical education and science purposes only, in the absence of a request for burial first by relatives or friends, 144 ¶ 1551, § 1, and must be properly buried or cremated after use, § 4. Trafficking in dead bodies is prohibited, 144 ¶ 1551, § 2. The state reserves to itself the right to explore, excavate, and regulate all aboriginal records, mounds, and burial sites found within the state, 127 ¶ 133c1, et seq., reserving unto itself also a property right in these entities, 127 ¶ 133c2, § 2.

INDIANA

Persons receiving supplemental assistance for the blind are to be buried at the expense of the state, § 12-1-6-11; as are those receiving supplemental assistance for the aged, § 21-1-5-11; and for aid to dependent children, § 12-1-7-13. The poor are to be buried by the township within which they die, § 12-2-1-20.

IOWA

The hospital in which a patient dies is to make proper burial arrangements under § 225.33, with reimbursement from the state treasury where necessary, § 225.34. Bodies received and used for scientific purposes can only be used for those purposes, § 142.8, and are to be decently buried or cremated after use, § 142.5. Permits and records are required for all handling of bodies, §§ 142.10, 142.31, 142.32, for disinterment, § 144.34, which is permitted only for autopsy and reburial. Ancient remains are to be reinterred when discovered, § 305A.7, in a cemetery established for that purpose, § 305A.8.

KANSAS (PCF)

The county governing body in charge of burial grounds shall prevent their use for any other purpose, § 12-1441. Money received from sales of unused cemetery property is to be used in the maintenance of the remaining cemetery, §§ 17-1308, 17-1317 to 1321, §§ 17-1328 to 1329. Bodies are to be removed from imperfectly sealed vaults, § 17-1326. Desecration of the dead is criminal under § 21-4112, as is desecration of a cemetery, § 21-4115. Where the body of the deceased is unclaimed, the coroner shall effect proper burial, with expenses paid from the county general fund, § 22a-215. The county secretary is to see to the proper burial of recipients of assistance, §§ 39-713d. Bodies used for scientific purposes are to be decently buried after use, §§ 65-902b to 904.

KENTUCKY

The coroner is responsible for the burial of all unclaimed bodies after bona fide attempt to notify and locate relatives, and to deliver property to the county government, § 72.450. Unclaimed bodies may be used only for scientific purposes, § 311.320, and known relatives and friends must first be notified, § 311.330. The body is to be properly buried or cremated after use, § 311.340. City governing authorities are to protect burial grounds from any other use, § 381.680, and may require the owner to care for cemeteries properly, § 381.700. The abandonment of a cemetery must be accompanied by notice and removal and reinterment of bodies and monuments to another cemetery, §§ 381.730 to 770. The bodies of executed criminals are to be decently buried by the state, §§ 431.250 to 270. The desecration of graves and abuse of corpses are criminal under §§ 525.110 and 525.120. The Kentucky Historical Society is responsible for the collection and publication of all information pertaining to Kentucky family cemeteries, § 171.313.

LOUISIANA (AGA)

Every dead body of the remains of a dissected body in the state shall be decently buried or cremated in a reasonable time, § 8:651. Disposition of human remains anywhere beside a cemetery is prohibited, § 8:652; as is the opening of graves and the stealing of bodies, § 8:653; and mutilation or disinterment of human remains, § 8:654. Remains can be removed from a cemetery only with permission or under certain conditions, §§ 8:659 to 8:660. Any authority in charge of remains shall be responsible for their interment, § 8:661. Desecration of graves is prohibited, § 14:101, as is vandalism of any cemetery, or other burial facility, § 14:225. Transportation of bodies must be free from public observation, § 17:2279. Trafficking in human bodies is criminal under § 17:2280. Paupers are to be properly buried by the coroner and paid for by the state after bona fide attempts to procure burial through relatives, § 33:1565, with organ donations in the absence of objections by relatives.

MAINE (PCF)

Bodies are to be removed from improper crypts or other burial structures and reinterred in a suitable structure, 13 § 1349. Every body within the state shall be decently buried or cremated, and deposited in a proper cemetery or mausoleum, 13 § 1032, with penalties for failure to comply under 13 § 1035. Desecration or defacement of any burial place, or interference with any cemetery or burial ground, are prohibited under 17-A, §§ 507, 507-A and B, as is abuse of a corpse under § 508. Transportation of bodies without proper permit is unlawful under 22 § 2708. Any almshouse, prison or other state institution in charge od a dead body shall be responsible for notification of the state board in charge, who is to notify any next of kin, 22 § 2883. Bodies are to be delivered free from public observation, 22 § 2885, to be used only for the advancement of science and thereafter decently buried, § 2886. Exhumation is permitted only when in the public interest, 22 § 3029. Ancient burial grounds of Revolutionary Soldiers or any other war veteran shall be preserved and kept in good condition, with liability of the town for failure to keep the graves in good condition, 13 § 1101. On the other hand, Indian skeletons discovered may be subjected to scientific study for up to one year, but must be transferred to the appropriate Indian Tribes after study, 22 § 4720.

MARYLAND

Sufficient amounts of proceeds from sales of burial grounds must be set aside to provide for the removal of remains and their proper reinterment in another cemetery, 16 § 119. The abandonment of a cemetery must be accompanied by the proper removal and reinterment of remains with appropriate notice or their proper perpetual care, § 120. Roads shall not be opened through burial grounds without written consent, 25 § 144. Graveyard desecration, the removal of dead bodies without authority (with the exception of potter's field, 27 § 266), the destruction of tombs, graves, trees, or other entities in cemeteries, and hunting on cemetery lands, are all prohibited, §§ 265, 267, 268. Executed criminals otherwise unclaimed will be buried by the state, 27 § 78. Unclaimed bodies may only be used for the promotion of medical science, § 5-407, and must be properly embalmed, § 5-406.1. Trafficking in bodies or body parts is prohibited; bodies may be exhibited for medical purposes, § 5-408.

MASSACHUSETTS (PCF)

Penal institutions, hospitals, and other public institutions are to permit the distribution of bodies otherwise to be buried at public expense to be used for anatomical science, 113 § 1. The bodies of veterans or of those expressing wishes to the contrary are not to be so used, 113 § 2. Executed murderers may be used for anatomical science if not otherwise requested by friends or relatives, 113 § 6. The decent burial of indigent persons will be provided by the state, 117 § 18A. The state is to provide funeral expenses for the aged and disabled receiving social services assistance, 118A § 7. Wilful disinterment of or buying and selling human bodies is criminal under 272 §§ 71, 72. Injuring or removing tombs, graves, memorial structures, trees or plants in any cemetery is a felony under 272 § 73. Other desecration is a misdemeanor under §§ 74, 75. Unauthorized construction in or through cemeteries is prohibited, § 77. Ancient burial places are to be cared for by the town under 117 §§ 18, 19. The use of cemeteries in the making of motion pictures without consent of authorities is criminal, 114 § 42B. Discovery of unmarked human skeletons is to be investigated; if American Indian, the commission on Indian affairs is to be notified, 38 § 6B, who is then to provide for the reburial after investigation and consideration by the state archaeologist, 7 § 38. If the remains are determined to be American Indian, the state archaeologist, the commission on Indian affairs, and the landowner decide the prudent and reasonable alternatives for the remains under 7 § 38A. The commission may regulate excavation disposition and display of remains and artifacts, all of which are considered the permanent property of the commonwealth.

MICHIGAN

Vacation of private cemeteries upon abandonment requires petition, notice, court proceedings, and reinterment within six miles of the city limits, including removal and replacement of all monuments, fences, and other articles in the cemetery, §§ 128.31, et seq. Unclaimed human bodies may be distributed for anatomical science, §§ 333.2652, 2653, and are to be properly buried or cremated afterward, §§ 333.2655, 2678. Careful records of all such bodies are to be kept, § 333.2656. Bodies not so used are to be properly interred, § 333.2658. The immediate reinterment of a body upon completion of an inquest by the sheriff is required under § 773.16. Permits are required for disinterment and reinterment of bodies, § 333.2853. Wilful destruction of tombs, memorials of the dead and cemetery items is prohibited under § 750.387, as is disinterment and mutilation of the dead under § 750.160.

MINNESOTA (PCF)

Dissection of any body is limited by statute to authorization by coroner and consent of relatives, § 145.161. Every body lying within the state is to be decently buried or cremated within reasonable time, § 145.162. Interference with a dead body of with a funeral is a misdemeanor under § 145.163. The commissioner of public welfare is to establish and maintain a cemetery for patients and inmates, §§ 246.33, 34. Maintenance of abandoned cemeteries is provided for under § 306.243, et seq. Trespass on cemetery land is prohibited under § 609.605(11). The provision of the equal respect for all human remains, and the prohibition of mutilation or desecration of all human remains, including monuments, ornaments, fences and shrubbery, lie under § 307.08. Protective perimeters are provided for identified Indian burial grounds, identified by the state archaeologist and the Indian affairs intertribal board. All unidentified human remains are to be dealt with likewise according to the provisions of this article.

MISSOURI

The coroner is responsible for the burial of unclaimed bodies, § 58.470. Receipt and use of bodies requires a permit and is regulated under § 194.130, trafficking in bodies or body parts prohibited under that section. Officials of all state institutions are responsible for the proper disposition at public expense of the bodies of paupers who expire in their care, § 194.150. Distribution of such bodies for purposes of anatomical science is first permitted, § 194.160. Any person who dies shall be buried by the county at its expense as determined by the county court, § 205.620.

MISSISSIPPI

Members removed surgically are to be properly disposed of, § 41-39-1. Unclaimed dead and deceased hospital patients may be distributed for purposes of anatomical science, and are to be properly buried afterward, §§ 41-39-5, 41-39-7. Paupers and strangers are to be properly buried by the county in which they are found, §§ 43-31-27, 43-31-29, 43-31-31. The bodies of executed prisoners are to be properly buried by the sheriff and paid for by the county where conviction occurred, § 99-19-55(4). Disinterment for malice or sale is a felony under § 97-29-19; as is trafficking in dead bodies, 97-29-21; and opening graves for profit under 97-29-23. Desecration of cemeteries is also criminal, § 97-29-25.

MONTANA

Extensive records of interments are required by the secretary, including the interment of paupers, strangers, and criminals under § 35-20-209. The burial of any corpse not claimed shall be decently executed by the coroner and paid by the county where necessary, § 44-3-403. Knowing transportation, interment or other disposition of a dead body without a proper permit is criminal under § 50-15-114(3)(a). Disposition of a body without permit is prohibited under § 50-15-405. Permits for disinterment and reinterment are provided for under § 50-15-407. Penalties are provided under § 50-15-112.

NEBRASKA

Nonresident paupers are to be buried properly by the county under § 68-114. Bodies of deceased inmates, patients, and others subject to burial at public expense may be first distributed by the state anatomical board for purposes of anatomical study, and properly disposed of, §§ 71-1002 to 1007. The cremation, disinterment, reinterment or removal from the state of human remains require permits and supervision, § 71-605. The desired removal of abandoned of cemeteries requires the establishment of a new cemetery and reinterment there or other appropriate provisions for the remains, §§ 12-519, et seq. Otherwise abandoned cemeteries, Indian burial grounds and pioneer cemeteries are to be preserved and cared for properly from the general county fund under §§ 12-805 to 811, including "spraying for the control of weeds and brush" (805). The coroner is responsible for the proper burial of unclaimed bodies, to be paid by the county treasury, § 23-1816. The unauthorized knowing removal, abandonment, or concealment of human remains or burial goods, or sale or transportation thereof, are prohibited, § 28-1301.

NEVADA

The coroner is to see to the proper burial of bodies not claimed, to be paid by the county where necessary, § 259.180. Every dead body lying within the state, or the dissected remains thereof, shall be decently and properly buried under § 451.020. If surviving relatives are not able, the governing body where the burial commences will pay the expenses with public money, § 451.025. The unauthorized removal of bodies from graves or other burial places is a felony under § 451.030, as is the unauthorized receipt of any body or trafficking of bodies. Seizure of a human body for recovery of a debt and obstruction of the lawful transportation of a body are misdemeanors under § 451.040. Permits and proper purpose are required for the disinterment of bodies, §§ 451.045, 451.050, and penalties are provided for noncompliance under § 451.060. The removal and reinterment of remains at corporate expense is required where a vault or other burial structure becomes a menace, § 452.240. Pasturing livestock in a cemetery is unlawful, § 452.290, as is opening a road through a cemetery without consent of authorities, § 452.300. Vandalism or defacing of cemeteries or other burial facility is prohibited under § 206.125. Indian burial sites are protected under §§ 383.150, et seq., under which the division in charge assists in negotiation of landowners where remains are located and Indian tribes, and permits excavation under regulation, and requires the reinterment of all remains and artifacts under Indian supervision following examination.

NEW JERSEY

The desecration of venerated objects, public monuments or burial place is prohibited, § 2C:33-9. In the case of abandonment, removal and reinterment of the remains in a suitable cemetery, notice and consent, and court procedure are required under §§ 8A:8-1, et seq., 40:60-25.39, et seq. The removal and reinterment of remains in cemeteries established for indigents is provided for under § 40:60-51.8, et seq. Consent of the cemetery company and survivor is required before remains are removed from an interment space, § 8A:5-20. Unidentified and unclaimed bodies are entitled to a decent and proper burial paid by the county under § 40A:9-49.

NEW MEXICO

Permits for burial, transit, disinterment and reinterment are required under § 12-4-45. The funeral expenses of public welfare recipients are paid by that department, § 13-1-22. Indigents are buried properly by the county, § 13-2-4. Disturbance of the remains od the dead is a misdemeanor under § 40A-12-2, as is defacing tombs or other burial places and monuments under § 40A-12-3.

NEW HAMPSHIRE (PCF)

The abuse of a corpse is unlawful under § 644:7. The director of the division of mental health is required to see to the proper burial of any indigent inmate at the expense of the state, § 135:27. Funeral expenses of recipients of public assistance are paid for where the deceased is unable to pay, § 167:11, as are those of old age assistance recipients, § 167:13. Unclaimed and unidentified bodies are to be decently buried by the overseer of the public welfare, § 611:24. Unclaimed bodies may be used first for the advancement of science, § 611:24,
§§ 291:1, et seq. Paupers are to be buried properly by the overseer of the public welfare, § 165:3. Uncared for cemeteries are cared for by the town in which they lie, §§ 289:5, 289:6. Reinterment in another suitable cemetery is required upon the discontinuance of any public cemetery, § 289:11. The accompanying monuments and other appurtenances are likewise to be properly removed, § 289:12. All interments and dispositions of human remains require a permit, §§ 290:5, et seq.

NEW YORK

Every body in the state is to be decently buried, 42 § 4200. Absent compelling public necessity, dissection is not to be permitted over the objection of surviving relatives and friends, 42 § 4210-c. Unclaimed cadavers may be delivered for anatomical science purposes, 42 § 4212; but will be released to friends or relative upon request, § 4213; and are to be properly buried after dissection, § 4215. Disturbance of graves and funerals, removal of eyes or other organs and body stealing with intent to sell are illegal under §§ 4216 to 4221. County boards are responsible for the acquisition of cemetery land for the burial of indigent persons, for that of indigent veterans separately, and for care of the cemetery, 5 § 222. All cemeteries are to be properly maintained, 17 § 291. The removal from potter's field and reinterment in a proper burial place of deceased veterans, and the reinterment of remains removed from abandoned cemeteries, are covered under 17 § 295. Proper procedure for removing abandoned cemeteries and their care in the place of reinterment are set forth, 17 § 296. Similar provisions are made for village cemetery removal under § 15-1502. Permits are required for burial, cremation, removal from the grave, etc. under 41 §§ 4102, 4144, 4145.

NORTH CAROLINA

Unclaimed bodies may be distributed for anatomical study and are to be properly disposed of afterward, § 130A-415. Exhumation is permitted only by the coroner under certain circumstances, § 130A-380. Destruction or disturbance of gravesites or markers in any way is prohibited under § 14-148, not applicable to a professional archaeologist, (b). Desecration, plowing over or covering up graves is not allowed, § 14-149, not applicable to a professional archaeologist, (b). Entry onto private property without consent to properly care for a gravesite is permitted under § 65-75. The Unmarked Human Burial and Human Skeletal Remains Protection Act, §§ 70-26, et seq., protects remains and put them under the control of the of the Executive Director, who has control over the ultimate disposition of Native American skeletal remains after consultation with the Indian tribe, §§ 70-32, 70-35.

NORTH DAKOTA (AGA, PCF)

Duty of burial devolves upon certain individuals, ultimately the county, § 23-06-03. Failure to bury within reasonable time results in a penalty, §§ 23-06-05, 23-06-06. Disinterment is allowed only when necessary for examination and autopsy, § 11-19.1-14. All bodies are to be properly buried at the charge of the state, §§ 11-19.1-15. 12-45-05. Permits are required for custody, transit and burial of the dead, §§ 23-02.1-21, 23-06-07 to 23-06-10. Failure to obtain a permit or to deal in bodies results in penalty under §§ 23-06-11, 23-06-12. Dissection other than for inquest requires permission of the deceased, § 23-06-13. Executed criminals, or those who die in a penitentiary, or others to be buried at public expense, may be distributed for anatomical study, § 23-06-14; unless they requested otherwise, § 23-06-15; and must be properly buried or cremated afterward, § 23-06-17. Trafficking in bodies is prohibited, §§ 23-06-18, 23-06-27; as is interference with burial of dead limb or member, § 23-06-19; the removal of a body from a gravesite or awaiting burial, § 23-06-24; the opening of a gravesite, § 23-06-27; and the attaching of a body, § 23-06-28. Abandoned cemeteries are to be maintained by the county, § 23-06-30. The proper removal of cemeteries and reinterment of the bodies is regulated under § 23-21-02, et seq., including notice and declaration of intent, and an endowment care fund for the new cemetery.

OHIO (PCF)

Burial expenses of social security recipients are provided under § 5101.52, as are those of others unable to pay their own expenses provided by the county, § 5113.15. Unclaimed bodies or bodies of tramps may be distributed for anatomical study, §§ 1713.34, 1713.38, and are to be properly buried or cremated after dissection, § 1713.36. There is a penalty for the unlawful possession of a body, § 1713.39. Vandalism of burial places is prohibited under 2909.05(C), as is abuse of a corpse, § 2927.01. The protection and preservation of cemeteries is provided for under § 517.11. The proper procedures for removal of a cemetery are provided under §§ 517.21, et seq., including removal of bodies and stones, notice to family and friends, the proper disinterment of bodies, § 517.23.

OKLAHOMA (PCF)

Burial expenses are provided for all inmates of state institutions or otherwise unable to pay, §§ 8-87, 8-88. Such bodies may first be used for anatomical study, 63 § 91, and are to be properly buried or cremated after dissection, 63 § 97. Specific provisions exist to protect sepulchre and remains of the dead, including the right to choose method of disposal of one's own body, 21 § 1151; the duty to bury within reasonable time, 21 § 1152; the prohibition of unlawful dissection, 21 § 1155; and the proper disposition of remains after dissection, 21 § 1157. Neglect to bury is punishable under 21 § 1159; as is unlawful removal of the dead under 21 § 1161; purchasing if dead bodies, 21 § 1162; and unlawful interference with burial places, 21 § 1163. The proper removal of cemeteries to another location is regulated typically under 21 § 1164. Attachment of the dead is illegal, 21 § 1165; as is disturbing funerals, 21 § 1166; and vandalism of a cemetery or tomb, 21 § 1167. Refusal of interment due to race, color or national origin is prohibited, 8 § 31.

OREGON (PCF)

Unclaimed or indigent bodies may be used for anatomical study, § 97.170, and must be properly buried following dissection, § 97.200. Disinterment requires specific provisions and purposes, § 97.220. Removal of an abandoned cemetery is regulated typically, §§ 97.450, 97-870 to 97.930, 266.620 to 266.630. Abuse of venerated objects, including places of burial, is prohibited, § 166.075, as is abuse of a corpse, § 166.085. Special protection for Indian graves is provided under § 97.740

PENNSYLVANIA

The county in which the body of any person lies will pay for and see to its proper burial unless provided for otherwise, 16 P.S. § 2166. Vandalism of cemeteries or other places of burial is unlawful, 18 C.P.S.A. § 3502, as is desecration of venerated objects, including places of burial, and abuse of a corpse, 18 C.P.S.A. § 5510. Burial of persons committed to state-operated facilities are buried by the state, 50 § 4424(10). The proper treatment of abandoned cemeteries and their removal is typically regulated under 53 §§ 47804, et seq., 9 §§ 41. Disinterment and reinterment are dealt with in 9 P.S. §§ 54, 55, and 56.

RHODE ISLAND

Unclaimed bodies are properly buried at public expense, § 23-18.1-1. Deceased inmates are properly buries under § 42-56-23. Illegal disinterment of bodies is a felony under § 11-20-1, as are desecration of a gravesite under §§ 11-20-2, 11-44-31. Records and permits for possession of the dead are required under § 23-3-28. The removal and reinterment of cemeteries is handled typically under § 23-18-10, 23-18-7. Historical cemeteries are registered, § 23-18-10.1, and damage thereof is to be prevented in nearby excavation, § 23-18-12. Vandalism of a cemetery is prohibited under § 23-18-12.

SOUTH CAROLINA

Unclaimed or indigent dead may first be used for anatomical study before being buried at the public expense, §§ 17-5-290, 44-43-530. Bodies being transported are to be so moved free from public observation, § 44-43-560. Traffic in dead bodies is prohibited, § 44-43-580. The removal of abandoned cemeteries is regulated typically, §§ 27-43-10, et seq. Burial areas to be flooded by the creation of a dam and reservoir are treated similarly, §§ 49-9-10, et seq. Dance halls may not be located within one fourth of a mile of a cemetery, § 52-13-20. Destruction of graveyards is criminal under § 16-17-600.

SOUTH DAKOTA (AGA)

Funeral expenses of the indigent are borne by the county where death occurred, §§ 28-17-1, 29-17-2. Permits are required for any movement of a body, §§ 34-25-32.2, et seq. The right to dissection exists upon authorization during life, § 34-26-3, or authorization by spouse or next of kin, § 34-26-4. Except where abandoned, consent of next of kin is required for the dissection of a deceased inmate, §§ 34-26-6, 24-1-27. All bodies used for dissection purposes must be properly buried afterward, § 34-26-11. The duty to bury persons devolved ultimately upon the coroner in the absence of others, § 34-26-16. Racial discrimination in burial is a petty offense, § 34-27-5. Reinterment of an abandoned cemetery is regulated typically in § 34-27-15. Opening a grave with intent to remove the body is illegal, § 34-27-18, as is removing the body with intent to sell or dissect, § 34-27-19.

TENNESSEE

Paupers are buried at public expense, § 5-9-311, and unclaimed dead are buried by the county executive, § 38-5-118. Trespass and injury to cemetery property are unlawful under § 46-2-105. Removal and reinterment of abandoned cemeteries are regulated typically, § 46-4-103.

TEXAS (PCF)

Burial expenses of a deceased inmate are to be paid by the state, § 500.015. Executed convicts may be delivered for anatomical study if unclaimed, but must be properly embalmed, Art. 43.25. Abuse of a human corpse is prohibited under § 42.10, including disinterring and carrying away or otherwise disturbing buried remains, buying and selling of bodies, or concealing a corpse. Desecration of venerated objects, including places of burial, is prohibited under § 42.09. The general management of cemeteries is regulated typically under §§ 711.001, et seq., including the duty to inter, § 711.002; records, § 711.003; removal, § 711.004; perpetual care funds, § 711.005; and relocation of abandoned cemeteries, § 711.007. Location of feed lots near cemeteries is prohibited, § 714.002.

UTAH

Cities are to provide for the burial of all indigent persons, § 10-8-74. Counties shall pay for the burial of all unclaimed bodies, unless delivered for anatomical study, § 26-4-25. Bodies held for investigation and autopsy are to be timely buried, § 26-4-16, and records are to be kept of bodies, §§ 26-4-17 to 26-23-5. Movement of human bodies of any kind without proper permit and purpose is prohibited, § 26-23-5. Corpse abuse, including concealment, dissection, removal or disinterment of any part of a body, is unlawful under § 76-9-704. Removal of abandoned cemeteries is regulated typically under § 8-5-1.

VERMONT

Burials of social security recipients and recipients of aid for the blind, aged and other assistance are paid for by the state in the absence of others, Title 33 §§ 3101, et seq. Movement of bodies in any form is unlawful unless authorized by permit, Title 18 §§ 5210 to 5217. Removal of bodies is a felony under Title 13 § 3761. Injury or destruction of cemeteries and monuments is unlawful under Title 13 § 3764; as is injury to burial grounds and shrubs, § 3765; and grave markers and ornaments, § 3766. Cemetery lots in disrepair are to be cared for, Title 18 § 5362. Removal of abandoned cemeteries is regulated typically under Title 18 §§ 5369, et seq., Title 20 § 118, et seq. Places for burial without charge are set aside, Title 18 § 5375.

VIRGINIA

Unclaimed dead are properly buried by the city or county where death occurred, § 32.1-288. Unlawful in Virginia are trespass at night on any cemetery, § 18.2-125; violation of sepulchre, including any burial place, § 18.2-126; and any injury to or mutilation of monuments, gravestones, and other elements of burial places, § 18.2-127. Exhumation is allowed only upon need for investigation, § 32.1-286. Sale of body parts is prohibited, § 32.1-289.1. Bodies used for medical instruction are to be properly interred, § 32.1-301. Trafficking in bodies is prohibited, § 32.1-303. Abandonment of cemeteries and removal and reinterment of remains is dealt with typically in §§ 57-36, et seq.

WASHINGTON

Undisposed remains are to be properly disposed by the organ in which they are entrusted, § 68.50.220. The bodies of persons to be buried at the public expense may first be used for anatomical study, §§ 68.50.060, et seq., unless the deceased requested otherwise, § 68.50.070. Bodies must be respectfully used, § 68.50.080. Permits for burial and any other movement are required, §§ 70.58.230, 68.50.110. Holding bodies for payment of debts is unlawful under § 68.50.120; as is disposition of remains anywhere besides a cemetery, § 68.50.130; opening graves and stealing bodies to sell or dissect, §§ 68.50.140, 68.50.145; mutilation or disinterment of remains, § 68.50.150; or the damaging in any way of graves, markers, shrubs, or other elements of burial sites, § 68.56.010. Removal of remains from abandoned or condemned cemeteries are regulated typically in §§ 68.50.200, et seq. Destruction of Indian graves is prohibited under § 27.44.010; however, examination and removal to museum for display is permitted under §§ 27.44.020, 27.53.020, et seq.

WEST VIRGINIA

Burial, transit or any other movement of human bodies requires permit under §§ 16-5-21 to 16-5-23. The unlawful disinterment or displacement of a body is prohibited under § 61-8-14. Relocation of abandoned cemeteries is handled typically under §§ 37-13-1, et seq.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

April 22, 1988

Memorandum

To: Assistant Secretaries

From: Assistant Secretary for Fish and Wildlife and Parks Bill Horn

Subject: Disposition of Archeological Collections Recovered Pursuant to the Antiquities Act of 1906

I understand that some of the Department's bureaus and offices have received requests from Indian owners of Trust lands to relinquish certain museum collections recovered from archeological sites located on lands that are owned or controlled by the Department of the Interior. In addition, some non-Federal repositories that are storing and managing certain museum collections on behalf of the Department also have received requests from Indian owners of Trust lands to relinquish some of those collections. The collections in question are those that were recovered under the authority of the Antiquities Act of 1906, prior to enactment of the Archaeological Resources Protection Act of 1979.

Because of the sensitive nature of this matter, I am issuing this memorandum to ensure that the Department (1) continues to fulfill its responsibilities to preserve these important archeological collections and (2) responds to requests in a consistent manner.

Legal counsel has advised that Antiquities Act collections remain subject to the Act, its implementing regulation (43 CFR Part 3), and the terms and conditions of the permit.[1] Section 17 of 43 CFR Part 3 sets forth the ultimate disposition of archeological collections recovered under the Antiquities Act:

> "Every collection made under the authority of the act and of this part shall be preserved in the public museum designated in the permit and shall be accessible to the public. No such collection shall be removed from such public museum without the written authority of the Secretary of the Smithsonian Institution, and then only to another public museum, where it shall be accessible to the public; and when any public museum, which is a depository of any collection made under the provisions of the act and this part, shall cease to exist, every such collection in such public museum shall thereupon revert to the national collections and be placed in the proper national depository."

This means that a repository cannot relinquish an Antiquities Act collection without the written approval of the Secretary of the Smithsonian Institution. It also means that the collection may be transferred only to another museum[2] where it must be accessible to the public.

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SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

HEARING ON S. 1021 AND S. 1980

THE NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION ACT

STATEMENT OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

BY

JERRY FLUTE, FIELD DIRECTOR

AND

JACK F. TROPE, STAFF ATTORNEY

MAY 14, 1990

Mr. Chairman and members of the committee, I am Jerry Flute, Field Director of the Association on American Indian Affairs, Inc. Accompanying me is Jack F. Trope, Staff Attorney. On behalf of the Association, we wish to thank the committee for the opportunity to testify on repatriation legislation pending before this committee, bills of great importance to American Indians.

The Association on American Indian Affairs, Inc. (AAIA) is a 65 year old national non-profit citizens' organization headquartered in New York City and dedicated to the preservation and enhancement of the rights and culture of American Indians and Alaska Natives. The policies of the Association are formulated by a Board of Directors, the majority of whom are Native Americans.

Based upon consultation with traditional Indian religious people, the Association has repeatedly endorsed the enactment of legislation which would:

- require museums to return or repatriate all Indian human remains, associated grave offerings and sacred ceremonial objects now in their collections upon request by culturally affiliated tribes or lineal descendants of the decedents, unless the museums specifically and clearly obtained title from the tribe or lineal descendants;

- require museums to provide a list to each tribe of those currently identified human remains, associated grave offerings, and sacred ceremonial objects which are likely to have belonged to the tribe, ancestors of the present day tribe or which are located on the tribe's aboriginal lands;

- provide semi-annual updates of the lists to such tribes;

- within a reasonable period of time, require museums to identify to the fullest extent possible the geographic and tribal origins of all human remains, associated grave offerings, and sacred ceremonial objects in their collections;

- provide for the scientific study of such remains only with the express consent of lineal descendants of the decedent where known or readily ascertainable, or where not known or ascertainable, consent of the tribe;

- provide that no legal rights of the tribes or lineal decedents shall be adversely affected in any way by legislation;

- declare unambiguously that it is unlawful to excavate remains in the future without the express consent of the appropriate tribe or lineal descendants.

Many of these recommendations are incorporated in the proposed substitute for S. 1980 and we strongly support the overall approach of the draft bill. We are concerned about some of the specific language of the proposal, however, and will be preparing an analysis for later submission. We look forward to working with the Committee to refine the draft substitute to make the final bill workable and fully responsive to the needs of the Indian community.

Our testimony today will focus upon four issues:

(1) The moral and spiritual basis for repatriation legislation.

(2) The sordid history of how and why many museums obtained collections of human remains, grave offerings and sacred objects.

(3) The fallacy of claims that substantial medical benefits have accrued from the study of human remains.

(4) The desirability and feasibility of a consent requirement prior to the scientific study (and actual possesssion of) human remains, grave offerings and sacred objects.

1. There is a strong moral and spiritual basis for repatriation.

The repatriation issue is of extreme importance to all Indian people and tribes. The issue raises fundamental moral, religious and human rights concerns that challenge the nation to recognize that Indians, no less than others, are entitled to benefit from the core values of religious freedom cherished by this country and explicitly recognized by the Nation's Founders in the First Amendment.

Virtually all religions provide rituals and standards for the care and treatment of cemeteries and human remains. These rituals form an important part of the beliefs and tenets of these religions. Such rituals and standards are of great importance in American Indian religious practice. As the Secretary of the Interior reported to Congress in August 1979,

> the prevalent view in the society...that Native American human remains are public property and artifacts for study,

> display and cultural investment...is in conflict with and repugnant to those Native people whose ancestors and near relatives are considered the property at issue. Most Native American religious beliefs dictate that burial sites once completed are not to be disturbed or displaced, except by natural occurrence.
> [American Indian Religious Freedom Act Report, p.64]

Most religions and most people share the view that burial sites should not be disturbed or displaced except in extraordinary circumstances.

During the past year, the Association on American Indian Affairs has consulted with more than one-hundred (100) Indian traditional and spiritual leaders regarding religious freedom issues, preservation of sacred sites, and the disposition of Indian human remains held by museums. These leaders represented tribes in the Northern Plains, in the Southwest and in Northern California. Without exception, the traditional and spiritual leaders expressed the view that the disinterment of Indian human remains is a sacrilegious violation of Indian spiritual and religious beliefs. According to the spiritual leaders, the disinterments have broken the trust of Indian ancestors by failing to give proper respect to their spirits. These spirits cannot rest until the human remains and associated grave offerings are revived in a proper religious ceremony. Many tribal, traditional and spiritual leaders view those opposing repatriation as "holding the spirits of Indian ancestors hostage in the name of scientific research."

2. Human remains and burial objects were collected for racist and other inappropriate reasons and by immoral and illegal means.

The tens of thousands of Indian human remains stored in museums attest to the fact that Indian grave sites all too commonly have been pillaged for profit or disturbed for spurious scientific purposes. A recent study by Dr. Robert E. Bieder (appended to this testimony) traces the history of the "collection" of Indian human remains and burial goods. He found that the reasons for collections were: (1) to advance certain racist scientific theories about the nature of the different races, particularly through the now thoroughly discredited "science" of phrenology (the study of skulls); and (2) as part of a "competition" between museums as to whom could collect the most Indian bodies and "artifacts".

The means for obtaining bodies and grave goods were unethical and unsavory. Bieder documents the stripping of whole villages of both artifacts and human remains in the dead of night with the contents carted off to museums. These actions were often taken with full knowledge that Indian people objected to such actions in that those seeking to "excavate or seize" Indian remains were forced to resort to surreptitious means to obtain them because they knew that the affected Indian people would violently resist the desecration of their burial sites.

Among the numerous examples of the failure of "collectors" to respect the basic humanity of American Indians were: (1) the boiling the bodies of recently deceased Indians by Army physicians and others to secure "fresh" brains and skulls for museums; (2) the retention of the bodies of four Inuit men and one Inuit girl who died in New York City in the early part of this century by the American Museum of Natural History; not only were the bodies not properly buried, but a mock funeral was held to convince the surviving son of one of the men that proper funeral rituals were being observed and that his father had been buried in accordance with Inuit custom; (3) in the late 1930's, scientists associated with the Smithsonian Institution descended upon Larson Bay on Kodiak Island in Alaska and dug up a Native graveyard with more than 400 bodies and skeletons. Photos of these unearthed people were published and the remains are still in the possession of the Smithsonian, notwithstanding numerous requests by the village for repatriation.

Outrageous activities continue even today as evidenced by the pillage of the Slack Farm grave sites in Kentucky, reported in the National Geographic magazine. In the fall of 1987, ten men leased forty acres of farmland at Slack Farm and proceeded to unearth hundreds of skeletons and associated grave offerings as part of a "relic-for-profit" scheme. If the skeletons of Abraham Lincoln or James Madison, the author of the First Amendment, were exhumed for profiteering, the country would be outraged. It is no wonder that Indian people are understandably appalled by the excavation of the grave sites of their ancestors and respected leaders such as Sitting Bull, a Hunkpapa Sioux.

It is disingenuous for museums, having obtained their "collections" by such dishonorable means and for such disgraceful purposes to now claim an entitlement to those bodies and items superior to the claim of the descendants of those disturbed.

3. There is no evidence of any meaningful medical benefits having been obtained from the study of human remains.

Claims have been advanced that the study of certain remains may be necessary for medical research in particular. AAIA recently requested Dr. Emery Johnson, head of the Indian Health Service for 12 years, to search the medical literature to determine whether any meaningful contributions to medical science had resulted from the study of human remains. His computer search at the National Library of Medicine of all of the major medical journals currently being published revealed that there has been no significant research in recent years that "will impact on the health of humans". His search revealed only one article in an obscure German publication (never translated into English) dealing with the weaning of babies and a woman's reproductive time span. (His report is attached to this testimony).

Thus, claims that the study of bones significantly advances medical science are simply unsupportable.

4. Consent by lineal descendents and tribes to research involving (and possession of) human remains, burial offerings and sacred objects is essential.

Even if it is accepted in theory that there may be a valid scientific reason for the study of human remains, any decision to permit scientific study of Indian human remains should be made by the tribe associated with the remains as well as the direct descendants of the deceased. The tribe and the direct descendants are in the best position to determine whether the need for continued study outweighs the need for reinterment.

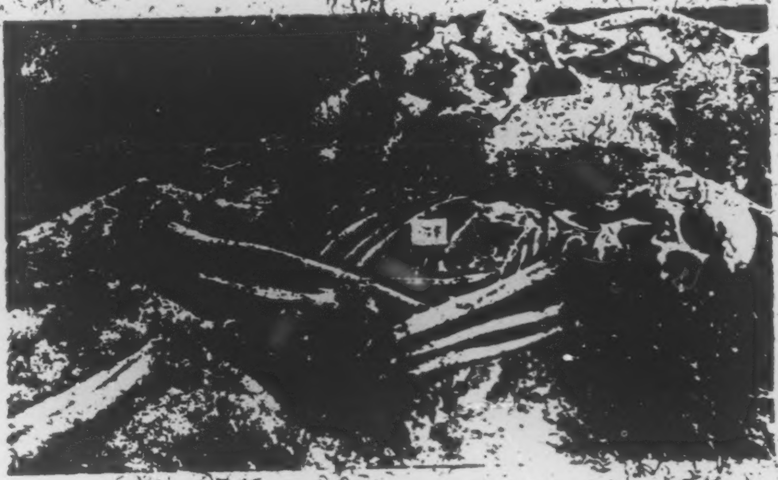
In his report to AAIA, Dr. Johnson recounted his experience with issues of medical research and tribal consent while head of the Indian Health Service. Dr. Johnson established an Indian Health Service policy that IHS would participate in tribally-based research only when it had been formally approved by tribal governments. At the time, this policy was attacked by researchers as foreclosing important research. The reality has been, Dr. Johnson reports, that important medical research continues to be carried out in Indian communities but with the informed consent of tribal governments and individuals involved. The change in policy did not prevent needed scientific research; rather it merely forced researchers to design their projects in a way that was more sensitive to the cultural and human rights concerns of the Indian community and tribe.

It is now time for the treatment of Native American human remains, associated burial offerings and sacred ceremonial objects to be based upon the human and spiritual concerns of the people most closely associated with them. As is the case with the IHS policy on general research established by Dr. Johnson, the study and collection of these remains and objects must be based solely upon informed consent.

Conclusion

The basic philosophy behind the proposed legislation is respect for the human and religious rights of Native Americans. Thus, we enthusiastically support the efforts of this committee. We look forward to working with you to refine this bill to fully address the needs and concerns of Native American people. Thank you for inviting us to testify before this committee.

A Brief Historical Survey of the Expropriation of American Indian Remains



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Bloomington, Indiana
April 1990

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ROBERT E. BIEDER

Cover Photograph: This is a photograph of one of the 146 dead Indians unearthed for public display at the "Indian Burial Pit" tourist attraction located near Salina, Kansas.

Photograph by courtesy of the Kansas State Historical Society.

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INTRODUCTION

This survey traces briefly the history of collecting Native American remains from the early nineteenth century to the twentieth century. In general it focuses on changing scientific thinking regarding Indian remains and the nature of this thought that emanated from Europe and reflected European social interests and cultural values. This report, however, does not explore the rich literature in both Europe and America that surrounded the debate over the orgin of the American Indian, yet the question of who Indians were and what their potential for civilization was is very much a part of the history here presented.

Although Thomas Jefferson was perhaps the first to open an Indian grave, at least his archaeology seems the first recorded, this report considers the debate between monogenists and polygenists as the prime catalyst in the collecting of Indian crania in the early nineteenth century. Whereas monogenists believed in a single human creation and that humans were mallable and racial differences were produced by environmental causes, polygenists--arguing from skeletal remains--asserted that humnan mallability was exaggerated; that bones told a tale of little change over thousands of years. Thus Indians and blacks remained just as they were originally and separately created. For many polygenist, however, skulls revealed something else. Though the measurement of crania, both personality and intelligence could be determined. This enabled polygenists to devise an intelligence ranking and assign non-whites to an inferior position on the scale. This early debate between monogenists and polygenists along with a history of the development of American ethnology is treated more fully in my work Science Encounters the Indian, 1820-1880 and in other articles.[1]

In the post-Civil War years, collecting Indian skeletal remains proved a preoccupation of museums. Here the Army Medical Museum played a significant role. A desire to make comparative racial studies of Indian tribes, led the Surgeon General to issue orders to Army medical personnel requesting them to collect Indian remains. And remains were collected from battlefields and from Indian graves. Other museums, like the Chicago Field Museum and the American Museum of Natural History, were also active in making similar collections.

The Eugenics movement beginning in the late nineteenth century and continuing into the twentieth also stressed skeletal analysis. In its desire to create a perfect Cacausian race, the movement advocated selective breeding among whites and encouraged laws to prevent race mixture. Skeletal remains, despite skepticism as to their value among some anthropologists, were used to stress the inferority of non-whites.

In the post-World War II years, the 1950s, there seemed little interest in skeletal research. This disinterest was due, perhaps, to the remembered atrocities of the late war so vividly connected with racial studies. By the 1960s, however, such research again became important in physical anthropology. It was also in the 1960s that American Indians began to assert their political presence on the American scene and eventually raised the issue of the repatriation of their ancestral remains from museums, universities and historical societies.

In the last few years, various Native American tribes, villages, families and organizations have vociferously demanded the repatriation of Indian human remains for reburial in accordance with their religious and mortuary traditions. National magazines routinely carry interviews with Native American leaders on this issue and articles, several are noted in the endnotes of this report, appear frequently in both newspapers and magazines informing the public on both sides of this debate. Most of this literature deals only with the contemporary scene. The main focus of this paper, however, is to elucidate the historical dimension of collecting the remains of deceased Native Americans in the context of changing scientific interests predominately in the nineteenth century.

1. Robert E. Bieder, Science Encounters the Indian, 1820-1880, (Norman: University of Oklahoma Press, 1986); "Scientific Attitudes Toward Indian Mixed-Bloods in Early Nineteenth-Century America," Journal of Ethnic Studies 8 (Fall 1980), 349-61; "Samuel G. Morton: Nineteenth-Century Craniology and the American Indian," Les Américains et Les Autres (Provence: Université de Provence, 1982), 7-19.

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A BRIEF HISTORICAL SURVEY OF THE EXPROPRIATION OF AMERICAN INDIAN REMAINS

In 1788 Thomas Jefferson opened a burial mound near his home in Virginia and began an American preoccupation with digging and collecting Native American human remains and burial objects. Replying to a question put to him by the Francois Barbé-Marbois, secretary to the French legation in Philadelphia, on whether Indians had monuments, Jefferson related his investigations. Offering perhaps what was the first "scientific description" of such grave opening, he wrote "I conjectured that in this barrow might have been a thousand skeletons."[1]

Even before Jefferson, others were absorbed in research on Native Americans but primarily with the question of Indian origins. Rather than generate theories from bones, they drew upon skin color, hair, languages and customs to confirm their assumptions. In the seventeenth and eighteenth centuries, efforts to explain the origins of the native people of the Americas originated often from the religious need to fit them somehow into the Biblical story. Most observers granted Native Americans their humanity but how they got to the Americas and why their physical appearance and customs should differ so much from what was known of the other peoples of the world, perplexed many. By the late eighteenth and early nineteenth centuries, this religious concern faded, replaced by an on going debate between Americans and Europeans centering on the supposed inferiority of nature in America, especially the inferiority of American Indians and by a concern for Indian administration. The first led to an enthusiastic study of the American environment "measuring the American climate and its effect on humans, and, most especially, by investigations into the size, strength, and physical and cultural accomplishments" of American Indians. The second concern focused on whether Indians could change and become civilized, as defined by nineteenth-century American society. A popular scientific theory of the Enlightenment asserted that organisms were shaped by their environments hence it was possible by manipulating the environment to mold an organism (human, animal or plant) into an acceptable form. Change the Indian's environment and one could change them physically and culturally. This theory,known as environmentalism, drew upon the ideas of Jean Lamarck, the French naturalist who proposed that the acquired traits of animals were passed on to subsequent generations. This theory of environmentalism underlay in part both colonial and later U.S. governments' support for religious missions to Native Americans; missions that sought to overthrow native cultures through example, education and religious teachings.[2]

In an essay published in 1799, Benjamin Rush, the noted Philadelphia physician, friend of Benjamin Franklin, and member of the American Philosophical Society, emphasized this environmental influence on the mind.

> The innumerable stimuli, with which [civilization, science and relgion] abound, not only *create* mind, but from the variety and difference of force, in which they operate, they produce that variety in its forms, which renders the study and knowledge of its so agreeable and useful. . . . The facts which have been mentioned, serve further to refute the objection which has been urged against the Mosaic account of the whole human race being descended from a single pair, from the weakness of the intellects in certain savages and barbarous nations. This weakness is as much the effect of the want of physical influence upon their minds, as a disagreeable colour and figure are of its action upon their bodies.[3]

The Reverend Samuel Stanhope Smith, president of Princeton, was also at pains to point out in 1810 "varieties of character among different nations which, when fairly examined, are found to be the results only of moral [educational] or of physical causes." Thus environments determined not only physical traits but character and customs.[4]

In the second and third decades of the nineteenth century there was a certain shrillness in the defense of the environmental theory of change. Environmentalism and the many theories of Native American origins came under attack. Criticism aimed partly at government Indian policy but also at the work of philanthropic religious organizations, attacked the notion that Indians could ever change their ways. Supported by slave holders and frontier entrepreneurs, who would clearly benefit from a theory that supported non-white inferiority and inability to progress, critics pointed out that neither Africans nor Indians could ever advance beyond their allegedly low mental states and must either be kept in slavery or exterminated (or allowed to pass into extinction) in order to make room for progress.

For years pressure had been building on the theory of environmentalism to explain Indian resistence or seemingly inability to change. Critics pointed out that although the "child-like" African did show some progress under slavery, the Indian after two centuries of exposure to Euroamerican society offered less encouraging results. Indian response to civilization was not to embrace it and change, but to wilt in its presence and die. Social, economic and racial conditions in America were not the only influence race theory development.

EUROPEAN RACIAL THEORIES AND AMERICAN SCIENTIFIC THINKING

Racial theories generated in Europe also had an impact on American scientific thinking. In a work commissioned by the Smithsonian Institution, Samuel F. Haven, Librarian of the American Antiquarian Society, wrote in 1856, "in the very difficult operation of drawing lines of demarcation between the assumed varieties of mankind, some test more certain than color, or any merely external attribute, has been regarded as necessary." Osteological research seemed to answer the need. American scientists were drawn to this "department of inquiry by the philosophers of Europe." Haven noted that "[Peter] Camper and [Johann] Blumenbach advanced the idea more than a half a century ago that a comparison of crania was a principal requisite in such inquiries." [5] Why these theories arose in Europe at this particular time, do not concern us here. What is important to note is how they arrived in America and the contribution they made to racial anthropology and the need to gather skulls in order to verify "scientific findings."

Blumenbach at the University of Göttingen drew attention to the usefulness of human crania for research into questions of race. From his study of crania obtained from various parts of the world, Blumenbach concluded that there were five basic races. Unlike some scholars who suggested that each human race represented a separate species--and hence with differing capabilities for civilization--Blumenbach believed races to be varities of the same species although he did concede, based on the shape of the skull, that the most beautiful race was the Caucasian.[6] Neither did Blumenbach agree with the Dutch artist and anatomist, Peter Camper, that certain races appeared to be closer to the lower primates than others. Camper, who believed he had devised a system of analysis by which the crania of different nations could be compared, based his theories on the facial angle that measured the degree that the lower jaw protruded from the face. That this protrusion was a characteristic of apes and non-white peoples, led Camper to conclude that the latter were physically closer to lower primates and hence more primitive.[7]

In both England and France, these ideas were picked up, elaborated upon, and used to advance the science of "craniology" and the politics of colonial exploitation. The importance of human skulls to these endeavors lay in the assumption that each race possessed an uniquely shaped skull; that skulls did not reflect environmental influence and therefore provided a more accurate measurement of the racial capabilities; and that cranial measurements provided an index of brain size and hence intelligence.

This latter correlation was the contribution of "phrenology," a study of the brain advanced by the Austrian, Josef Gall and the German, Johann G. Spurzheim. According to phrenological theory, the brain was divided into sections, or faculities, and respective sections determined aspects of personality, intelligence and behavior. The exercise of any of these sections would, as in a muscle, cause further physical development that would press against the skull causing it to protrude. Since, according to phrenologists, each race had what was called a "national skull" racial intelligence and primary behavioral and personality patterns could be discerned through a study of the shape of the skull.[8] However, as one phrenologist instructed, "every Indian head does not any more represent his tribe than does that of every French or German head." Yet, because "each tribe has a well marked national form of head, and between the several tribes there is frequently an immense difference of cranial configuration" numerous crania are needed for research.[9]

SAMUEL G. MORTON AND THE BEGINNING OF AMERICAN PHYSICAL ANTHROPOLOGY

Americans pursuing medical education in Europe in the late eighteenth and early nineteenth centuries, came under the influence of these ideas in craniology and phrenology. One who absorbed these theories in his studies at both Edinburgh and Paris was the Phildelphian physician, Samuel G. Morton, often referred to as the founder of physical anthropology in America. When Morton returned to Philadelphia in 1823, he assumed a teaching position at the Philadelphia Hospital and Pennsylvania College and discovered to his dismay that he had no skulls of different races for class use. His search for human skulls of all races and his subsequent investigations, led not only to the racial findings expressed in his Crania Americana, findings that would color racial thinking long after his death in 1851--but also laid the foundation for anthropological interest in the search for deceased Indians.[10]

Morton received numerous offers from collectors eager to send him Indian remains to advance the science of craniology. A Samuel Hildreth not only sent Morton Indian remains from the Ohio and Mississippi valleys but also urged friends from the upper Mississippi to likewise add to Morton's collection.[11] Some collectors realized Morton's need for more than one skull from a locality. As Edward Herrick of Connecticut wrote, "I hope to be able to procure more skulls from this locality, as it seems to me dangerous to draw general inferences from one specimen, since it is not always easy to distinguish between those points which pertain to the race or tribe, [and] those which are peculiar to the person who once possessed the skull."[12]

In an 1837 letter explaining what he wished to do, Morton wrote to his phrenologist-physician friend Dr. John Collins Warren in Boston, "my plan. . .is to give a preliminary view of the _Five Races_ of men as proposed by Blumenbach, and to illustrate each by genuine specimens. I shall then go on with the American series, in which, however, I am yet considerable deficient, but am promised assistance from so many different sources."[13] One of these sources to whom Morton sent a list of his crania needs was a Gerald Troost in Tennessee. Troost responded, "It seems from your list that you have no skull of the Cherokees[.] I am going to pay them a visit about the 1st of next month and I will try to get you one or more if I can, but those fellows do not like that anybody disturb the bones of their dead."[14]

Army medical doctors were often a good source for crania. One who provided Morton with crania was Zina Pitcher. Although he had resigned from the army by 1837 and entered private business in Detroit, he promised to send to Morton some Chippewa skulls since he was eager to help Morton build an "American Golgotha".[15] Another doctor who aided Morton in collecting was Dr. John Bachman of Charleston, South Carolina. Although they later disagreed sharply over whether Indians were a race or a separate species, in 1837 Bachman was anxious to aid Morton in his craniology. He wrote to Morton of "two Indian skulls" in the Charleston area. One was that of Mad Wolf. "There are some points about the cranium of this grand rascal that I have no doubt some of your Phrenologists will make much of." The other belonged to an Indian killed in the Florida campaign. The artist, John James Audubon, however, wished to send Mad Wolf's skull of Mad Wolf to a friend in Scotland.[16]

Others in Europe were also interested in American Indian skulls and in the racial implications of Morton's work. The German explorer-ethnologist, Prince Maximilian Weid-Neuweid wrote to Morton in 1837, expressing his interest in receiving a copy of Morton's Crania Americana when it came out.[17] When in 1836 Maximilian was enroute to the Missouri, he noted that Charles Alexander Lesueur, the French naturalist then living in New Harmony (Indiana), "examined many of these tumuli [mounds], and sent part of the articles found in them to France." This perhaps began Maximilian's interest in collecting Indian skulls. Along with Lesueur, Maximilian sent Indian skulls, thought to be Mascoutin, to Blumenbach in Göttingen.[18]

Another collector in the South, William Powell, felt that Indian skulls might be valued in Europe. He wrote to Morton asking him to inquire of the Scottish phrenologist George Combe, then visiting and lecturing in America on phrenology, if by sending "400 to 500 Indian skulls" to Europe Powell would be providing a valuable scientific service to phrenology.[19]

As noted in the Troost letter, collecting Indian skulls was not without danger to the collector - a good indication about how Indians felt about having their graves looted. As one collector wrote Morton:

> It is rather a perilous business to procure Indians' skulls in this country - The natives are so jealous of you that they watch you very closely while you are wandering near their mausoleums & instant & sanguinary vengeance would fall upon the luckless _______ who would presume to interfere with the sacred relics. . . . There is an epidemic raging among them which carries them off so fast that the cemeteries will soon lack watchers - I don't rejoice in the prospects of death of the poor creatures certainly, but then you know it will be very convenient for my purposes.[20]

This proved not an isolated problem. Another collector in Iowa wrote to Morton that as soon as the Indians in the neighborhood are removed, he would be able to send Morton skulls of two of their eminent chiefs.[21] The promotion of science had its dangers.

Yet not all encountered this danger. Writing from Michigan, Douglas Houghton had little fear. "No difficulty will occur in obtaining you the skulls of a Pottawatomie, Winnebago and Chippeway, but it may require some little time to procure those of distinguished or known personages." He went on to state, "Dr. Pitcher. . .has promised to draw up a short sketch of the life of a noted Chippeway Chief whose skull we hope to be able to procure and forward [to] you."[22]

When Morton's Crania Americana[23] came out in 1839, it was well received in both American and in Europe. His analysis of crania capacity and, as he believed, intelligence buttressed popular racial prejudice. The crania were ranked in the following order:

52	skulls of	Caucasians	had a mean of	87	cubic inches
10	" "	Mongolians	" " " "	83	" "
147	" "	American Indian	" " " "	82	" "
18	" "	Malay	" " " "	81	" "
29	" "	African	" " " "	78	" "

Morton's friend Combe, stressed the point of size as indicative of intelligence. "The exact coincidence betwixt the development of these skulls and the character of this people [Indians] would lead us to suppose that they represent a national shape. The general size is greatly inferior to that of the average European head; indicating inferiority in natural mental power."[24] This same theme was echoed by a writer in the American Phrenological Journal and Miscellany in 1841. Claiming that since the "moral and religious organs are comparatively small, and the animal and semi-animal ones proportionably large," civilization for Indians was virtually impossible. Consequently, Indians faced inevitable extinction: "The experience of more than two centuries has abundantly evinced, that that 'family,' as a body, can be neither civilized nor actually conquered and enslaved; but that their ultimate extinction is an event which is approaching, and whose accomplishment nothing earthly can prevent."[25]

Morton, although the most famous, was not the only doctor collecting Indian heads. The Indian Agent, Henry Rowe Schoolcraft, in Michigan recorded a grisly tale of an incident that took place in Sault Ste. Marie on the night of September 26, 1826. As Schoolcraft reported, a soldier saw "Robert McKain deliever an Indian head wrapped in a handkerchief to the hospital at Fort Brady." The soldier claimed that he did not rob the Indian grave but that the head had been dug up by another soldier. Schoolcraft noted, however, that

> Robert McKain has long had the reputation among his companions, of digging up dead bodies of Indians for pay. That sometime in the month of August last, between the 1st & 18th of that month, said McKain informed this deponent that he had been offered a

> good price by Doctor Lyman Foot for bringing him three Indian heads, and proposed to this deponent to assist in digging them up, which (this deponent) promptly declined. This deponent further says, that on the night of the 2nd of September instant, a light was seen in the Hospital during the night, as was reported among the soldiers at the guard house on the following morning. It was further added, that some of the guards went to the Hospital windows, suspecting that the heads of the Indians were in preparation, and saw kettles on the fire. And the guards who were stationed near the Hospital that night complained that a most abominable stench was experienced by them during the night arising from the Hospital, and supposed to be the effects of boiling the Indian skulls.[26]

Clearly the collecting of Indian skulls appears to have been an "cottage industry" at some frontier military posts.

But the needs of craniologist Morton did not provide the only stimulus that sent Americans digging for Indian human remains. Phrenology, or rather the rise of phrenological societies, the establishment of museums, and the romantic American interest in the mounds and search for ancient civilizations, often made collecting human remains profitable.

Phrenological societies arose during the 1830s and 1840s. The largest were in New York, Boston, and Philadelphia, but they also could be found in smaller places like Cincinnati. According to one report there were several skull collections in New York City.[27] Beginning as a "science" that many believed offered a window into the workings of the brain, phrenology soon degenerated into quackery and disrepute but not before it took root in American thought and contributed to American racial prejudice. By claiming to be able to determine personality by "reading" bumps or protrustions of the skull, phrenology was the poor man's psychology. Before slipping into disrepute, phrenological societies often included leading scientists and medical men in their membership lists. Most of the societies maintained rooms where a "library" of human and animal skulls and plaster casts of heads was available for study by its members. The plaster casts were usually those of famous or notable personages from both Europe and America and were compared with the skulls of criminals, the insane, the indigent, Indians and blacks.

In A Catalogue of Phrenolgical Specimens Belonging to the Boston Phrenological Society, as listed for 1835, one finds descriptions of several Indian skulls and an assessment of their personality and attributes (which were generally extended to include the whole tribe) as read from the bumps on their skulls.

71. Esquimaux [skull]
72. Esquimaux [skull] - Tyloolik; accompanied Captain Parry as interpreter and draughtsman.
73. Flathead Indian [skull]
82. South American Indian [skull][28]

363. North American Indian, who was shot many years since while prowling round a home in the interior of Massachussetts. [Traits of] Combativeness, Destructiveness, and Secretiveness uncommonly large. Benevolence deficient.
364. A Choctaw Indian, obtained about three hundred miles above Natchez. This is believed to be a fair specimen of this tribe of Indians, who are extremely degraded, manifesting [sic] in their no love of approbation.
365. A cast taken from the scull [sic] of an Indian of the Wyandot tribe, in Mr. Dorfenille's Museum, Cincinnati.
366. A cast taken from the scull [sic] of Pepick, a distinguished Winnebago Chief, who was killed at Chicago, in 1812, at the head of a party of his tribe by the American troops.
367. This cast was taken from one of three similar marked crania in the possession of S. Willis Pomerory, of Cincinnati. He procured them five miles above the Great Kanawha on the Ohio River. There are good reasons for supposing it to be a specimen of the Shawnee tribe of Indians.
368. A cast of scull [sic] obtained from an Indian burying ground about two and half miles in the rear of Natchez. Several sculls [sic] were obtained at the same time; they were found in a horizontal position, with the right hand extended by the side,

> and the left hand placed across the breast. They are supposed from various circumstances, to be the crania of the Natchez Indians.
> 369. A cast of a scull [sic] taken from a mound in Cincinnati, Ohio, and supposed to be a fair specimen of the crania which properly belong to the mounds of our country. It is called by Dr. W. B. Powell, to whom the Society is indebted for these valuable casts, the 'Monumental Indian.'
> 370. A Peruvian Indian. Obtained from a cemetary, in which no interments have been made since the conquest by Pizarro, near a Temple of the Sun, about twenty miles to the Southwest of Lima. The organization very closely resembles that of No. 369, which Dr. Powell calls the 'Monumental Indian.'
> 371. [Skull] Said to be that of a North American Indian. Probably Peruvian.
> 372. Indian scull [sic], found in an Indian burying ground in Georgia. Supposed to have been buried several centuries. Constructiveness large.
> 373. Scull [sic] of North American Indian.[29]

It seemed to be the practice of these various phrenological societies to loan out or exchange crania to other societies or to individual phrenologists or craniologists. This often led to damage or loss.

As late as 1856, books appeared on phrenology. One written by, Orson S. Fowler, cleryman, architectural innovator, and phrenologist, was quite popular. Fowler, who owned a large phrenological (skull) library in New York City, never tired of promoting the "science." Concerning the Indian skulls in his collection, Fowler noted "a general feature common to them all." The skulls were large in areas that denoted destructiveness, secretiveness, and cautiousness, and combativeness. "This combination of organs indicates just such a character as the Indians generally possess."[30] Fowler then, from his analysis of Indian skulls, contributed to popular prejudices by drawing an unflattering racial picture:

> Their extreme destructiveness would create a cruel, bloodthirsty, and revengeful disposition--a disposition common to the race--which, in connexion [sic] with their moderate or small benevolence, would make them turn a deaf ear to the cries of distress, and steel them to such acts of barbarity as they are wont to practice in torturing the hapless victims of their vengence. [Because of] their extermely large destructiveness combined with their large secretiveness and cautiousness. . . . we may expect them to glory in dark deeds of cruelty; in scalping the fallen foe, and in butchering helpless women and children.[31]

It is significant to note that those traits Fowler "discovered" in Native American crania coincided with the same negative traits which the public commonly identified with Indians.

Museums also manifested an interest in acquiring Indian remains. As noted above, Joseph Dorfeuille, who was the owner of Dorfeuille's Museum in Cincinnati, supplied to craniologists and phrenological societies casts of skulls that were in his museum. Some museums were mere "show shops" where along with skulls, animal freaks and other natural oddities were displayed. The Grave Creek Mound in what is now West Virginia, while not a museum, was developed as a "tourist attraction" in the early nineteenth century charging a fee to visitors who wished to tour the interior of a mound and view the skeletons there exhibited.[32] Other museums were very much devoted to science, such as the Museum of Comparative Zoology at Harvard, founded by the famous Swiss born zoologist Louis Agassiz.

Agassiz proved a brilliant scientist and organizer. With a network of influential friends--including Samuel G. Morton--Agassiz was able to amass funds to support his various projects; under his direction and influence, the Harvard museum grew.

According to an Agassiz scholar, "Collectors sent in shipment after shipment of materials from all over the world, ranging from turtle eggs of Australia to photographs of European racial types and 'one head of a North American Indian, in alcohol."[33] At some point, Agassiz decided that the museum should increase its collection of Indian bodies for scientific study. Writing to Secretary of War, Edwin M. Stanton in January of 1865, Agassiz requested, "Now that the tempeture is low enough. . .permit me to recall to your memory your promise to let me have the bodies of some Indians; if any should die at this time. . .All that would be necessary. . . would be to forward the body express in a box. . . . In case the weather was not very cold. . .direct the surgeon in charge to inject through the carotids a solution of Arsenate of soda. I should like one or two handsome fellows entire and the heads of two or three more'"[34]

By mid-century a noticable shift had taken place in scientific views of the Indian and other non-whites. Changes already brought about by the industrial revolution--already in progress before the Civil War--forshadowed even greater progress and further disruption in American society. Villages, cities, even the landscape, were being transformed. And as Americans looked around in bewilderment at the rapid pace of "progress," they saw in the Indian an unprogressive type. Whereas at the beginning of the century, environmentalism was the dominant scientific theory of change, by mid-century many "scientists" drawing their conclusions from the study of bones, or from the investigations of others, held a negative view of non-whites and saw in them no possibility for progress. According to such thinking, they were innately inferior and their slavery or extinction could be attributed to biological circumstances. Again, Combe pointed out in regards to the Indian, "Even contact with European settlers, surronded by arts and enlightened by intelligence, has scarcely communicated one spark of energy to this miserable race."[35]

It is true that not all "scientists" held these views but many who did were extremely vocal in their assertions of non-white inferiority and inability to change. Politicians like Senator John C. Calhoun found Morton's work on crania especially useful in arguing the southern cause for slavery. Undoubtedly, others also found such arguments effective for the perpetuation of slavery and/or the expulsion of Indians from lands coveted by Euroamericans. These theories undoubtedly contributed to the lack of sensitivity in viewing Indian people and led to statements such as those made on the Joseph Ives expedition to the Colorado in 1857-58:

> A third Hualpais turned up this morning; he had features like a toad's, and the most villainous countenance I ever saw on a human being. Mr. Mollhausen suggested that we should take him and preserve him in alcohol as a zoological specimen. . .[36]

PHYSICAL ANTHROPOLOGY AND ETHICS AT MID-CENTURY

The theory of Morton and his followers--in what was termed the American School of Anthropology--was, by today's standards, overtly "racist" in nature and reflected the attitudes of large sections of the population. Members of this "school" were obstinate in their view of non-white inferiority. From their scientific perspective, racial types were seen as separate species and the study of bones yielded proof of their immutablity and inferiority.

This racial theory was propagated all too often on stolen data. Given the difficulties and dangers involved in stealing Indian bodies from closely guarded graves, the impropriety of such acts were obvious to collectors. As early 1809, John Bradbury in his travels among the Mandan noted, "there were a great number of stages erected about a quarter of a mile from the village, on which the dead bodies were depositied, which, for fear of giving offence, I avoided; as I found, that although it is the custom of these people thus to expose the dead bodies of their ancestors, yet they have in a very high degree that veneration for their remains which is a characteristic of the American Indians."[37] Bodies on scaffolds were not forgotten. They were allowed to dry for one or two years and then the family would gather the bones, wrap them carefully and then bury them.[38]

Another traveler, John K. Townsend, in his travels on the Columbia River in 1833-34, visited Indian "tombs" and was "especially careful not to touch or disarrange any of the fabrics, and it was well we were so, for as we turned to leave the place, we found that we had been narrowly watched by about twenty Indians, whom we had not seen when we landed from our boat. . . .I have been very anxious to procure the skulls of some of these Indians, and should have been willing, so far as I alone was concerned, to encounter some risk to effect my object, but I have refrained on account of the difficulty in which the ship and crew would be involved, if the sacrilege should be discovered; a prejudice might thus be excited against our little colony which would not soon be overcome, and might prove a serious injury.[39]

Later, however, Townsend was able to steal his skulls:

> I visited to-day some cemeteries in the neighborhood of the fort, and obtained the skulls of four Indians. Some of the bodies were simply deposited in canoes, raised five or six feet from the ground, either in the forks of trees, or supported on stakes driven into the earth. In these instances it was not difficult to procure the skulls without disarranging the fabric; but more frequently, they were nailed in boxes, or covered by a small canoe, which was turned bottom upwards, and placed in a larger one, and the whole covered by strips of bark, careful arranged over them. It was then necessary to use the utmost caution in removing the covering, and also to be careful to leave everything in the same state in which it was found. I thought several times to-day, as I have often done in similar situations before: - Now suppose an Indian were to step in here, and see me groping among the bones of his fathers, and laying unhallowed hands upon the mouldering remains of his people, what should I say? - I know well what they Indian would do. He would instantly shoot me, unless I took the most effectual measures to prevent it; but could I have time allowed me to temporize a little, I could easily disarm his hostility and ensure his silence, by the offer of a shirt or blanket; but the difficulty in most cases would be, that in a paroxysm of rage he would put a bullet through your head, and then good bye temporizing. Luckly for my pursuits in this way, there are at present but few Indians here, and I do not therefore incur much risk; were it otherwise, there would be no little danger in these aggressions.[40]

Another traveler to the Columbia River country was more scruplous. In his travels down that river in 1843, Thomas J. Farnham visited the "Island of Tombs" or, as it was also called, Sepulchre Island. There the graves covered by large cedar boxes attracted non-Indian visitors. "Underneath the undecayed bodies were many bones from which the flesh and wrappings had fallen, in some instances a number of wagon loads. Three or four of the tombs had gone into ruins, and the skulls and other bones lay strewn on the ground. The skulls were all flattened. I picked up one with the intention of bringing it to the States. But as Mr. Lee assured me that the high verneration of the living for the dead would make the attempt very dangerous, I reluctantly returned it to its resting place."[41]

Such quotes expressing Indian regard for their burials and the danger grave robbers faced could be multiplied. According to some early accounts, Indian "burial places are respected even by their enemies, and sites where they are located are sacred."[42] The French-born botanist, Jean Louis Berlandier, also noted the veneration Indians paid to the dead and claimed that "the Comanches, like almost every other nomadic people, are very scrupulous in their observance of this custom. Where they pass by the grave of a warrior they leave a few of their weapons, The women leave some fruit or a dish of something of which he was particularly fond."[43]

Obviously, robbing Indians' graves was offensive to Indian tribes. But it should be emphasized that grave robbing also offended Euroamerican norms and mores, at least it did in 1788, if the body belonged to a white person of middle class or above.

When King's College students in New York City needed bodies for dissecting (each student had to provide himself with a body) they obtained them illegally under the cover of darkness from two burial grounds: potters field and the black burial ground. Bodies in these cemeteries were easy to dig up and carry away since they were not buried in wooden coffins. As the need for cadavers increased, students became bolder and began to sneak bodies from the graveyard at Trinity Church. Although snatching corpses of the poor or of blacks went unprotested, taking them from the Trinity Church yard caused public indignation.

> Throughout that spring the medical students, though severely critized in the two weekly newspapers, continued their activities recklessly while public anger increased. The reports were exaggerated by countless rumors, and everyone recalled the harrowing details of the grave-robbing epidemic in Scotland and England during the first half of the century.[44]

On April 13, 1788, a small incident triggered a two day riot termed the Doctor's Riot or Anti-Dissection Riot that brought the city to a stand still, and caused those doctors and medical students, who did not seek safety in the jail, to flee. At the end of the riot, a grand jury recommended penalties for both doctors and students. Laws were passed in New York State during the winter and spring of 1788-89 that decreed not only what bodies could be used for research but also made it legal "for the courts to add dissection to the death penalty in cases of murder, arson, and burglary." These laws, Anatomy Acts of 1789, while legalizing certain bodies for dissection also established punishments for grave robbers. In 1790 Congress passed similar laws for the nation. Unfortunately, "doctors and teachers in individual states, however, still encountered a great deal of difficulty in legally securing sufficient bodies, and body snatching continued in rural areas well into the 1800s."[45]

That American attitudes regarding the dead did not shift much by mid-nineteenth century is evident in the comments made regarding John Collins Warren's decision to leave his body to science. Warren, the physican-phrenologist noted above, left detailed instructions as to how it should be prepared for class use. This rather shocked his biographer:

> When a cold-blooded sceptic, whose heart has never thrilled with a tender sentiment, and who has looked upon himself as a mere earth-clod stimulated into brief activity and to be resolved into thin air and lifeless dust, leaves orders to cheat the grave of its due, we feel disgust, yet no surprise. But Christian faith and the undying hope to which it gives birth attach a sacredness to the body which has been the tenement of an immortal soul, and none are so heedful of the rites of sepulture and the inviolableness of the tomb, as those whose belief in Christian verities is the most intimate and vital. This feeling is enhanced by the doctrine of the resurrection of the body, which, no doubt with some latitude of construction, is an essential article of the creed of the Church to which Dr. Warren gave his allegiance. . . . We cannot but regard this bequest to his favorite science as a noble act of self-sacrifice; and while our intuitive sympathies are all arrayed on the other side, we feel constrained, by their instinctive recoil and shudder, to hold his memory and honor.[46]

For many this Christian revulsion did not extend to rifling the graves of Indians, blacks, poor and/or criminal whites. Their bodies were expendable for science in the early nineteenth century. Probably very few physicians or scientists had the courage of their convictions to flaunt custom and to demonstrate the fairness of Warren to dedicate their bodies to science. The sanctity of the grave was as strong in mid-nineteenth-century America as it was in 1788 and in the early 1700s in England and Scotland.

MUSEUM COLLECTING IN THE LATE NINETEENTH CENTURY

In the post Civil Wars years, the study of Indian shifted in focus. In archaeology, rather than a search for Indian racial origins, the emphasis now was on early human inhabitation in the Americas and on museum collecting. Events in Europe pushed American ethnology-anthropology in this direction. The publication of Charles Darwin's Origin of Species and the discovery of ancient human remains in Europe shattered the old time frame and greatly lengthened the period of human existence on earth; the search for early man in the Americas was begun. As archaeologist Robert Braidwood pointed out, "It appears to me that the prime hallmark of later nineteenth and early twentieth century prehistory was the notion of unilinear progressive evolution."[47] This he attributes to the influence of Darwin's works. Most of the searches for early humans in the Americas, however, proved unrewarding because, without a stratigraphy for dating the finds, there was no proof of age. Collecting of skeletal remains was driven perhaps by the debate between those who held that human evolution resulted in the increased growth of the brain and those who pointed to the assumption of upright posture. For those who linked brain size to progress, crania were necessary and Indian crania were vital to anthropologists seeking to chart the development of progress for the American Indian.

According to one historian of archaeology, other reasons for digging may also have been involved. "Archaeological surveys and excavations were initiated with a definite purpose in mind and were no longer merely for the sake of discovering what lay beneath a particular mound of earth or heap of rubble. . . . The important thing to realize is that the digging of sites for specimens and other information had become an end in itself.[48] This suggests that the pure joy of digging for remains often motivated both professional and amateur archaeologists. If they could justify their activities by claiming such to be a "contribution to science" or for sheer profits, all the better.

Artifacts discovered in digging also had their importance and value. The "usual aim was an account of the artifacts recovered and their probable uses." That many of these artifacts were to be found associated with graves and were often listed in published accounts that drew attention to their value, probably contributed to the large number of graves that were rifled during this period. Both human remains and artifacts interred as grave offerings were sent off to museums or sold by enterprising farmers, amateur archaeologists, or others who recognized that the earth could be made to yield a profit without having to mine or farm it. In Utah, ranchers were hired by archaeologists to loot graves of funerary offerings. All too often, the "archaeologists" were "well-meaning Boy Scouts, bored farmers, clerics, and country doctors; ladies-club lectures, journalists and publishers."[49] School teachers could also be added to the list.

The founding of museums, museum collecting and the competition between museums, contributed greatly to growing demand for artifacts and the digging of grave sites. European museums and their collections had long influenced European cultural and scientific life. In America, the founding of the Smithsonian Institution in 1846 and the Museum of Comparative Zoology at Harvard in 1859 were major events for American science. Spurred by the example that these institutions presented and the demands of local pride, Chicago and New York soon followed with their own musems of natural history. Among these institutions competition for artifacts and human remains grew. The collecting often proved intense and generally indiscriminate. In many instances those who collected for museums were untrained. Indeed, there was little training available at is time. "Although a few museums maintained loose connections with universities, archaeology was not a classroom topic." Many of the collectors were "self-styled adventurers, more interested in enjoying travel, romance, and pseudo-scientific controversy than in attempting to establish archaeology as a science."[50] Partly the rather hasty and erratic collecting of American museums in 1880s and 1890s derived in part from a sense of injured nationalism and what they viewed as unfair competition from European museums absconding with American Indian artifacts and remains.[51]

Probably not the most notorious collector but certainly one who employed a rather cavalier approach to collecting artifacts and Indian bones was Warren K. Moorehead. With his jaunty hat, dark moustache and good looks, Moorehead cut quite a figure in mid-west archaeology. Educated at Denison University, he served for a while on the staff of the Smithsonian Institution and eventually became curator and later director of the department of archaeology at Phillips Academy in Andover, Massachusetts. "Largely self-taught, Moorehead sold antiquities to support his great passions, which were field work and collecting artifacts." Between 1891 and 1893, Frederic Ward Putnam of the Peabody Museum and Harvard University hired Moorehead to collect artifacts and Indian remains for Chicago World's Columbian Exposition.[52]

In his report of his expedition to southern Ohio, Moorehead seemed to flit with unusual speed from one burial mound site to another often hiring local help; "a force of men were employed to open graves and village sites along the banks of the Little Miami River, some three hundred feet below the level of Fort Ancient."[53] The funerary objects and occupants of these graves and many others were gathered for the Exposition. "From the river burials about thirty five good crania were secured. Numbers of diseased bones. . .and other osteological peculiarities were observed."[54]

In other Indian burials Moorehead found "splendidly preserved skeletons" and from a large mound that took "some ten men. . . engaged for nearly three weeks" to excavate, he "took a total of seventy nine skeletons."[55] Although Moorehead claimed that the "several hundred bones from all portions of the human body" would be of interest to anatomists, no anatomist seems to have looked at them.[56] Even human remains which were badly decayed were removed and sent to the Chicago exhibit; "about one hundred skeletons were taken from the effigy, nearly all of which were badly decayed."[57] And later Moorehead reported that "a total of thirty-eight skeletons were taken from the Little Miami River bank. . . .[and] of these eighty-nine per cent have been saved entire for exhibition." Some, like "grave number five" were "preserved with a view to reconstructing it in the Department Exhibit."[58] After exciting the morbid curiosity of the public at the World's Columbian Exposition, these Indian remains were deposited at the Field Museum of Natural History in Chicago which was founded after the close of the fair.

Moorehead, who always had a sharp eye for artifacts, discovered that some of the graves contained exceptional works of art these were also sent on to Chicago.

> With two of the skeletons whole pottery was found. . . .Several of the skeletons were remarkably well preserved, others lying near the surface in disturbed strata were as much decayed as those found in the South Fort Cemetery. . . .Upon the breast of Number sixty-one was a beautiful shell ornament carved from a fresh water ? shell. One remarkably preserved child some six or eight years old was secured for exhibition.[59]

In all, Moorehead shipped hundreds of Indian remains to Chicago for the 1893 Exposition. One notes in these reports that Moorehead was sorely disappointed in finding graves in which there were no artifacts since it was really the burial possessions that seemed to interest him most. "Several children's remains were discovered, but nothing of importance was found with them." Contrast this to his enthusiastic discovery of a grave that included sheet copper, "beads," and a "cap or helmut of copper" crowned with wooden antlers. Here seemingly was a find of greater importance than Indian bones.[60] In a handwritten note appended to his reports, Moorehead states, "a most interesting illustrated monograph of great scientific value could be written upon the Hopewell group. It is to be hoped that some anthropologist will study the collection, - paying especial attention to the sheet copper designs, the crania and skeleton (to learn racial peculiarities) and give to the world such a publication."[61]

What value did Moorehead's collection serve to science? Very little. His "prizes" were poorly excavated and identified, the hundreds of skeletons collected were useless according to recent scholars who have examined them.[62]

There was, however, a more important goal in digging in the Ohio Valley and that was to assert one's institutional claim to an area. After the founding of the Field Museum, Moorehead wrote to George A. Dorsey, the curator of Anthropology at the Field Museum, warning him that the musem should not hesitate to assert its claims to the mounds and burial grounds of the Ohio Valley or other museums along with regional historical societies would. In competition with the Peabody Museum and the Smithsonian Institution, the Field Museum also had to contend with the Historical Society of Chillicothe and the Ohio Archaeological Society in Columbus for possessory rights. Staking out and claiming mounds and burial grounds (often in the process involving elaborate secret negotiations) proved important for defining one's institutional reputation. The clandestine nature of these claims and the intrigue involved are emphasized in a series of letters written by Moorehead, Dorsey and others to proceed quickly to gain control of these vital mounds and burial grounds under stealth especially before the Ohio societies gained access to them. The human remains and artifacts of the Ohio Valley were important not only to round out collections but also as "prizes" in regional and national competition.[63] This competition is again sharply etched in the fight between the Field Museum and the New York's American Museum of Natural History over Northwest Coast artifacts and skeletal remains.

The founding of the American Museum of Natural History in 1891, grew out of a conscious rivalry with the Museum of Comparative Zoology in Cambridge and the Washington Smithsonian Museum. The use of American in its name indicated that the founders hoped that it would be the museum of natural history thus reflecting New York's self proclaimed status as the first city of America.[64] The competition with the Chicago Field Museum over anthropological collections developed later and out of a personal slight bitterly felt by the German-born American anthropologist, Franz Boas.

Arriving in the United States in the 1880s, Boas held a succession of positions before he became curator of anthropology at the American Museum of Natural History. His work in Berlin led him early in his American career to concentrate on the study of Northwest Coast cultures. In 1888, Boas was hired by the

British Association for the Advancement of Science to make a linguistic and physical anthropological survey of the Northwest Coast. In this task, as one historian noted "he devoted much of his energy. . . to physical anthropology, to measuring Indians (usually those in jail), and more especially to collecting skulls and skeletons. This he pursued with his usual zeal and, as with his ethnological collection in 1886, with speculative intent." Yet not without some misgivings. Boas found "it is most unpleasant work to steal bones from a grave, but what is the use, someone has to do it. I have carefully locked the skeleton into my trunk until I can pack it away." Yet even repulsive activities had their price. "Yesterday I wrote to the Museum in Washington asking whether they would consider buying skulls this winter for $600; if they will, I shall collect assiduously. Without having such a connection I would not do it.[65] Short of money and eager to acquire funds to pay research expenses, Boas dug in a burial ground near Victoria and "on an island near Port Essington, (while a photographer distracted the Indians)," and at Saanich and Lytton.[66] He was little rewarded for his efforts.

> He could collect only a dozen or so skulls himself and about the same number of skeletons, but he heard of a Cowichan collection of about 75 skulls that James and William Sutton had gathered for the American phrenological market. . . .When [Boas] received assurance from Washington that there was a market for such material, he bought the entire Sutton collection, bringing his British Columbia total to some 85 skulls and 14 complete skeletons. The Sutton brothers were willing to gather more and Boas, telling them of some sites he knew of, left an order for whatever they could find. Working both by land and sea, the Suttons gathered 48 skeletons complete with crania, one without, and 74 skulls - a total of 123 individuals in all.[67]

At the rate that Boas paid, $20 for a complete Indian skeleton and $5 for an Indian skull, the Suttons' collection was worth about $1300. Yet it was a collection that caused some bad feelings. According to the Suttons, "the bones were 'in caves and such out of the way places' that he had had 'to buy some of the indians' at a dollar each to show him the sites." When word leaked out 'some half breeds at Fort Rupert started quite a distrubance and tried to incite the Indians to shoot them.'"[68]

At Alert Bay the police were notified and William Sutton worked quickly to prevent an investigation. Increasingly his collection of human remains was becoming an embarrassment and Suttons, fearful that the authorities would confiscate them, sought to get rid of them "'as soon as possible.'" When the Cowichan Indians later discovered that some of their graves had been open, Sutton was suspected.[69]

Boas paid $1600 for his whole collection of Indian skeletons and crania which soon totaled about 100 complete skeletons and 200 crania. His attempt to resell them, however, proved difficult. This, however, did not prevent Boas for continuing to collect more. Even after he sold "a large collection" to Rudolf Virchow in Berlin, Boas's collection still totaled 238 items. About 179 of these were from the Northwest Coast, primarily Salish and Kwakiutl tribes. Eventually, the "collection" was sold to the Field Museum in 1894.[70]

In 1891, Boas was hired by F. W. Putnam, of the Peabody Museum, to mount the Northwest Coast exhibit for the World's Columbian Exposition. Boas also hoped that he would be selected as curator of anthropology for the newly proposed Chicago Field Museum. The Field Museum, however, passed over Boas and selected William H. Holmes and then Dorsey. Boas was deeply embittered by this treatment. He eventually ended up at the American Museum of Natural History and saw his competition with the Field Museum for Northwest Coast artifacts and Indian remains as a kind of personal war.[71]

At the Field Museum, Dorsey, who had worked under Putnam at Harvard in archaeology, sought to expand the museum's Northwest Coast collection thatthe museum acquired at the end of the Columbian Exposition. With generous funding Dorsey was able to collect extensively and rapidly. On his first trip to the West for the Field Museum he set himself immediately to the task of collecting Indian crania and skeletons.

On his way to the Northwest Coast, Dorsey paused long enough among the Blackfeet to collect human remains and among the Kootenay he obtained two skeletons which he considered quite a rare find since the Kootenay, probably because of previous experience with grave robbers, were quite watchful of their cemeteries.[72] Reaching Vancouver, Dorsey hired a guide and set off for the Skungo burial cave reputed to be filled with Indian skeletal remains. On the way they stopped long enough at the Indian village of Yan to take a skeleton and two crania and at the village of Kung to empty a shaman's grave house. The same proceedure was followed at "Georgie's Coffin House," as Dorsey called it, where another Indian skeleton was aquired.[73]

It was at Skungo cave, however, that the real "riches" lay. There Dorsey "rapidly scavenged the cave for all that was worth taking, extracting 'a large collection of complete skeletons of both sexes and of various ages' along with 'many objects of ethnological interest.' The total haul was at least sixteen individuals and probably more."[74] From Skungo cave, Dorsey traveled northward to the abandoned Tlingit village of Old Tongass where he hoped find a shaman's grave. Since the Tlingit preferred cremation to burial, "'it is no easy matter to secure osteological material from the Tlingits.'" At Old Tongass, however, Dorsey succeeded in discovering another grave house. As he describes it,

> Removing a portion of one of the walls, we could see the body, which had been carefully wrapped in several cedar-bark mats, and tied into a neat bundle with stout cedar-bark rope. Over the bundle were branches of bog myrtle, and under the head was a box. Removing the wrapping still further, we disclosed the desiccated body of a woman doctor. In one hand she clasped a long knife, it steel blade entirely wasted away, leaving only the handle. In the other hand was a beautiful carved wooden pipe inlaid with finely polished abalone shells; but her real title to distinction lay in the immense wooden plug or labret which she still retained in her lower lip.[75]

Other Indian remains Dorsey collected, with as little finesse, in burial grounds at Port Essingston and at Bella Bella.[76]

Boas, who encountered Dorsey on this trip, was sharply critical of Dorsey's superficial collecting. As historian Cole points out, Dorsey's collecting for the Field Museum was a "rip-and-run operation" and notes that even Dorsey himself likened it to "poorly disguised plunder." At one point, Dorsey was arrested for grave desecration. On Queen Charlotte Island so "flagrant was the pillage" by Dorsey that a missionary reported angry complaints from the Indians. "'They tell me that bones & other things have been removed wholesale, & that the perpetrators had not even the grace to cover up their excavations." Nearly every grave in the area was opened and the coffin boxes lay about. "'In one case some hair, recognized as having belonged to an Indian doctor, and a box which had contained his body, were found floating in the sea.'" The missionary was incensed that an American collector for a museum could "'so mecilessly ride roughshod over the susceptibilities of the Indians.'" that he sought to "expose the rascal."[77] Boas, who was delighted with these attacks on his rival, confidentially admitted having committed the same kind of grave robbing himself. He was, however, quick to point out that he never angered the Indians, although he did not mention the difficulties in this regard of his collectors, William and James Sutton.[78]

Despite the booty collected on this first trip, Dorsey still felt that the Field Museum still did not have a complete enough collection. He offered to buy from a Dr. C. F. Newcombe--later to become Dorsey's primary collecting agent in the Northwest--Indian skulls from five to twenty dollars each and up to twenty dollars for skeletons.[79] Correspondence between Newcombe and Dorsey over a period of several years attest to this obsession to collect more osteological remains. As revealed in their correspondence, one of the easist ways to collect was either during an epidemic or when the Indians left their village to hunt or fish. Newcombe, who owned a boat, boasted to Dorsey how he stored stolen grave goods and human remains in a locked compartment, and when he had Indian help around, would keep them distracted while he hid the remains. Newcombe--not atypical of collectors in the area--at time resorted to theft, bribery and deception to gain skeletal remains. He even bought from gold prospector who discovered that digging up Indian burial ground could be easier and more profitable than mining for gold. In all this, Newcombe had Dorsey's blessing.[80]

PHYSICAL ANTHROPOLOGY AND THE ARMY MEDICAL MUSEUM: COLLECTING AS OFFICIAL POLICY

If competition between the Field Museum and the American Museum of Natural History was intense and led to stripping whole villages of both artifacts and human remains. The members of the Edward H. Harriman Alaskan Expedition of 1899 engaged in just such activities. Stopping at a nearly abandoned Tlingit village at Cape Fox, the members of the expedition, "with a feeling that what was unguarded was unowned, screens, boxes, crests, inside houseposts, and memorial poles went from shore to ship. The California Academy of Science, the Chicago Field Museum, thestate universities of Michigan and Washington, and the Peabody Museum of Harvard all received examples of monumental sculpture."[81] They were not, however, the only museums collecting. European museums, French and especially Germans were active on the Northwest Coast as was the Smithsonian Institution.[82] As one historian said of this period:

> In retrospect it is clear that the goods flowed irreversibly from native hands to Euro-American ones until little was left in possession of the descendants of the people who had invented, made, and used them. This situation, often regretted and sometimes deplored, in which the natives are divorced from the products of their heritage, has created some demands for repatriation, demands like those of the Greeks for the return of the Elgin Marbles.
>
> If most exchanges were normal commercial transactions, the entire process can also be viewed as an unequal trading relationship, the product of a colonial encounter in which, in the long run, the terms of trade were stacked in favor of those who were part of the dominant economic system, tilted toward those whose economic system generated a surplus of the cash upon which all had come to depend.[83]

While the Field Museum, the American Museum of Natural History, the Smithsonian Institution, and other smaller museums sought to collect all aspects of American Indian life and material culture, another Washington museum sought in the second half of the nineteenth century to collect only Indian osteological remains. The Army Medical Museum, founded in 1862, sought human remains of all races but from 1865 through the 1880s gathered primarily Indian remains. On September 1, 1868, the Assistant U.S. Surgeon General sent out the following official order to all Army medical officers:

> The Officers of the Medical Staff are informed that a craniological collection was commenced last year at the Army Medical Museum, and that it already includes 143 specimens of skulls. The chief purpose had in view in forming this collection is to aid in the progress of anthropological science by obtaining measurements of a large number of skulls of aboriginal races of North America. Medical Officers stationed in the Indian country or in the vicinity of ancient mounds or cemeteries in the Mississippi Valley or the Atlantic region have peculiar facilities for promoting this undertaking. They have already enriched the Mortonian and other magnificent craniological cabinets by their contributions and it is hoped they will evince even greater zeal in collecting for their own Museum. A list of

> the crania now in the possession of the Museum will soon be published in the Catalogue of the Osteological Series of the Anatomical Section. It is sufficient here to state that 47 of the 143 specimens are Indian crania from the following tribes: Tsuktshi 1, Flathead, Chenook, Selipsh, Nisqually, 13; California, 2; Piegan, Spokan, Mandan, 3; Arickaree, Gros Ventre, 2; Sioux, Kaw, Minataree, Menominee, 6; Cheyenne, Kiowa, Arrapahoe, Wichita, 10; Navajo and Apache, 5; doubtful or mixed breeds, 5. These crania were collected by Brevet Lieutenant Colonels J. Cooper McKee, D. C. Peters, C. C. Gray, F.L. Town, Surgeon B.E. Fryer, Brevert Majors J.F. Weeds, W. H. Forwood, Acting Assistant Surgeons W. Matthews, and G. H. Oliver, Dr. George Suckley, Mr. George Gibbs, Lieutenant (now Brevet Major General) G.K. Warren, and Mr. Lloyd Brooke. Information has been received of the shipment of an interesting series of crania exhumed from an ancient Indian mound near Fort Wadsworth, Dakota Territory, by Acting Assistant Surgeon A. I. Comfort, and of many crania procured at the instance of the Medical Directors of the Department of Columbia and the District of Texas.
>
> While exotic and normal and abnormal crania of all descriptions are valued at the Museum for purposes of comparison, it is chiefly desired to procure sufficiently large series of adult crania of the principal Indian tribes to furnish accurate average measurements. Medical Officers will enhance the value of their contributions by transmitting with the specimens the fullest attainable memoranda, specifying the locality whence the skulls were derived, the presumed age and sex, and, in the case of 'Mound' skulls, or of those from cemeteries, describing the mode of sepulture, and any traces of weapons, implements, utensils found with the specimens, or any other circumstance that may throw light on their ethnic character.
>
> The subject is earnestly commended to the attention of the Medical Officers of the Army.
>
> By order of the Surgeon General[84]

As with Samuel G. Morton earlier, military and especially medical military men were requested to collect Indian osteological remains. The response was favorable. By 1873 Surgeon General J. K. Barnes could write,

> The Medical Officers of the Army have collected a much larger series of American skulls than have ever before been available for study. The collection embraces many ancient crania from caves and tumuli, from Greenland and Alaska, to Florida and Arizona, and specimens from the majority of the existing tribes

> of Indians, and of the extinct races of the historic period. These as well as a sufficient series of skulls of the white and black races, have been carefully measured and figured by orthographic drawings so that the dimensions may be verified.[85]

A letter from one such surgeon is characteristic. "In 1869 when serving at Ft. Randall[,] D. T. as A. A. Surgeon I received an order from your Dept. to make a collection of Indian Skulls for the Nat. Med. Museum. I complied with that order to the utmost of my ability."[86] Obviously, the order of 1868 was not the only request sent to posts around the country.[87]

Stationed at military posts in the West, and often near the scene of fighting, army medical personnel were in a good position to acquire Indian remains and to provide appropriate biographical and historical context. This is seen in a letter from Surgeon B.E. Fryer, writing from Fort Harker, Kansas in 1869:

> I had already obtained for the Museum the skull of one of the Pawnees, killed in the fight you speak of, & would have had all had it now been that immediately after the engagement, the Indians lurked about their dead and watched them so closely, that the guide I sent out was unable to secure but one - Until within a day or two the snow has prevented a further attempt - Yesterday I sent a scout who knows the spot & think[s] I can get at least two more of the Crania - that number being reported to me as left unburied by the Pawnee, & it may be that if the remaining five (eight not seven were killed) are buried or have been hid near where the fight took place - about twenty miles from here - I can, after a time, obtain all - I shall certainly use every effort -[88]

Army physicians also had the medical facilities to "prepare" the bones and the means to send them to Washington. This is revealed, for example, in the writing of one contributer. Referring to the head of a recently killed Kiowa Indian, "his scalp and the soft parts of the face and neck were carefully dissected up from the skull, atlas and axis, and these were subsequently boiled and cleaned for the Army Medical Museum. The skull was carefully cleaned and then steeped in solution of lime for 36 hours. . ." [89] And not just bones were prepared and preserved. "I have at last (today) secured a fresh Indian brain for the Museum. It is now being soaked in Erlick's fluid and will be ready for shipment in a week. . . .It comes from a full-blooded adult male Apache."[90]

Not all, however, who contributed Indian skulls to the Army Medical Museum were army medical personnel. After his trip to the Northwest Coast, Boas also sold some of his collection to the Army Medical Museum netting him a total of ten dollars for three Indian skulls.[91] Another was William A. Collins, who sent in the skeleton of an eight foot Indian that he hired someone to steal from its grave. "I took the body to a rendering establishment and with the assistance of the proprietor boiled the flesh and grease out of the bones in a clean kettle, so that no bone was lost or none added."[92] One physician sent in the skull of his patient, a Sandwich Islander "It is genuine- for 'I knew him well', attended him in his last illness, and made his head responsible for his medical bill - It has now served my purpose, and I turn it over to you. . ."[93]

The official reason given by the Army Medical Museum gave for collecting osteological remains of American Indians was for comparative racial study. It sought to demonstrate racial characteristics. After his examination of "osteological peculiarities," Dr. George A. Otis of the Army Medical Museum announced in 1870 that data indicated that American Indians "must be assigned a lower position in the human scale than has been believed heretofore." These findings pricked the interests of not only U.S. physical anthropologists but anthropologists engaged in human biology world wide.

> Anthropologists in different parts of the world are anxious for the data thus accumulated for comparison with similar data published in Sweden, Russia, Germany, Italy, France and England. The French government thro' its legation here, after making repeated applications for the tables of cranial measurements, employed an artist to make casts and take photographs of a series of typical skulls; and a professor of Bonn made the study of the collection the object of a trip across the Atlantic.[94]

The rapid rise of physical anthropology after the Civil War was rooted in a national sense of human progress both culturally and biologically; it also grew out of the fascination with statistical methodology and its usefulness in anthropometric investigations. The statistical search was on for the "average man" and his furture development. Writing in 1869, Benjamin A. Gould, a member of the National Academy of Sciences and president of the American Association for the Advancement of Science, noted:

> Indeed the external form of this average man may legitimately be adopted as a standard of beauty and a model for art. The eminent scientist [Lambert Quetelet] has shown that we may discover not merely the outward semblance of this abstract being, but his needs, capacities, intellect, judgement, and tendencies; and Quetelet may thus be regarded as the founder of statistical anthropology, indeed of social science, in the true significance of the word, according to which science depends upon the investigations of laws, not upon the consideration of isolated facts, nor the dissemination of correct principles.[95]

Through the use of statistics scientists hoped to discover a way to redesign man. Measurements were made of body size and head size. To measure the Indian was to know the Indian; to know his capabilities and weaknesses; and to possibly reshape the Indian into a being able to survive in civilization as Americans defined it. Although voluminous measurements were indeed made of living Indians, Indian remains continued to be vital in research.[96]

This statistical preoccupation with physical characteristics was to underscore the work of the Bureau of American Ethnology. In a draft of a letter written by Samuel P. Langley, Secretary of the Smithsonian Instition to William H. Holmes, Chief of the Bureau of American Ethnology, Langley was sharply critical of the Bureau's work and reminded Holmes that the Congress expected something more practical from the Bureau and suggested, among other things, the "application of methods of anthropometry and in general physical anthropology to the American Indian. . . .This to include the study of the mixture of the Indian with white and other races and its results, as far as possible." Such osteological data, along with examples of Indian art and industry should be "secured, arranged and placed on display" and would not only illustrate the history of the American Indian but also aid the government in formulating Indian policy.[97]

The racial characteristics of Native American remains seemed uppermost in the minds of some collectors. One, collector from Camp Robinson, Nebraska, wrote "the skull is in good condition and in my opinion shows the race peculiarities quite markedly. .

. .[it is]the complete skeleton of a very young squaw, say about 16 years old. . . .the markings and race characteristics are. . .not so well shown as in the previous specimen."[98] Sometimes physical beauty in life induced one collector to retrieve a skull for the Museum. Such was the case of a "squaw having remarkable beauty" and who had been the mistress of two soldiers at Fort Randall. Upon the death of this young Yanktonnais woman, the post surgeon located her grave and removed her head, proudly proclaiming the acquisition of "a fine specimen" for the Museum.[99] Such also was the case of a Commanche woman "of middle age, good physique, etc." that the surgeon at Fort Concho Texas "dissected" for the Museum.[100] That these bones lost any respect as human remains and had just become objects of natural history is evident when a barrel containing "the heads of the four Modoc Indians, Capt. Jack, Schonchis, Boston Charley and Black Jim" arrived at the Army Medical Museum and labeled merely as "specimens of natural history."[101]

But there were other reasons for collecting skulls. The prospect of the complete disappearance or extinction of American Indians prompted some to gather up Indian skulls fearing their loss to science. As one collector wrote to the Surgeon General regarding a Flathead Indian skull, "this tribe of Flathead Indians is so rapidly passing away, it is thought the specimen [skull] may be of value to your museum. . ."[102] A more gothic note is sounded in a letter of Spencer F. Baird of the Smithsonain to someone in the Anatomical Section of the Army Medical Museum. "Some one by the name of Dodge from the

Aricultural Department in sending in some skulls from Montana requests 'a spare human cranium' he would 'like to present to a college society at Yale [Skull and Cross Bones Society?] of which he is a member. I told him we had none but that you could perhaps spare one. If you have a cranium. . .I would be glad if you could oblige him."[103]

Given the Army Medical Museum's idea of the usefulness of skulls for comparative study of race or even of different tribal groups, how valuable were the skulls in settling such questions? If the focus of research lay not on Indian origins but on racial typology and intelligence as measured by brain size, then the identity of the skull was important. Some letters throw doubt on both the identity and the usefulness of collections to achieve these ends. One correspondent noted that it was difficult to obtain skulls representative of particular tribes. "The different tribes get so mixed up by adoption, by capture, and by the habits of promiscous intercourse of many of the women, that it is already difficult to find pure specimens of each tribe."[104]

One major problem, of course, was the identity of the skull, or skulls, in question. Not every collector could discover the tribal provenance of the Indian remains he collected. Sometimes confusion regarding the identity of a Native American skeleton often led to it being disposed of as was the case of one skeleton thought to be Indian slave. According to a second report in the above case, "This skeleton has also been said to be from a late warrior; its identity is therefore a question; and the bones, as they do not show anything but the juvenility of the subject and are much earth stained[,] are not kept."[105] Just how they were disposed of was not indicated. In another case the identity of a skull was open to a vote. A skull dug up in Texas led to a dispute and was put to a vote among border Texans, Mexicans, and soldiers as to whether the skull was Commanche or Kiowa. The vote gave it to the Commanches but later, other information strongly suggested Kiowa and clouded the whole issue.[106] For their study of comparative tribal crania, such skulls were useless.

Native American skulls could be traded and many were. Indian crania from a mound near Vicksburg were sent to Rudolf Virchow in Berlin and a Flathead skull was sent to a Professor E. De Bois Reymond, Director of the Physiological Institute of Berlin. Some Indian skulls were traded to a R. Forrer in Strassburg in exchange for some Roman skulls.[107]

As the Indian agent among the Chippewas of Lake Superior reported, "'There is probably no people that exhibit more sorrow and grief for their dead than they.'"[108] Like all peoples, Indian felt natural grief at the loss of loved ones and expressed this grief in the many tribal religious ceremonies of farewell to the departed. Although Indians were vigilant in guarding their dead, this, at times, proved impossible. Tribal hunting and fishing expeditions often required extended absences from village cemeteries and burial grounds. Epidemics that swept through villages often prohibitied performances of customary funerary rites; indeed, epidemics often so desiminated a village the inhabitants had no opportunity to guard or bury the dead who were then were easily acquired by those who sought to profit from

Indian misery. In repeated instances during the late nineteenth century, the government removed entire tribes to reservations far from their burial grounds.

Still collecting Indian remains could be as dangerous on the Plains and in the Southwest as it was on the Northwest Coast. Repeatedly, the letters of the collectors speak of the danger they braved robbing the graves and/or scaffolds. From the Dakotas, one graver robber writes, "I have the honor to report that I have forwarded to you a box, containing 25 Indian crania, and other specimens. . . .In making this collection, I could get the co-operation of no one, except my guide Hecke. . .on account of the hazardous nature of the undertaking."[109] A Fort Randall collector noted his fear of having been observed by passing Indians wnen he was in the process of digging a grave and on another occasion of stealing a skull from a scaffold. This same individual seemed particularly proud of his daring, for on yet another grave robbing expedition, he writes:

> The skull of an old Indian whose father was a Yankton and mother a Brule. Died at this post on the 7 day of Jan, 1869 and was buried in his blankets and furs in the ground about a half mile from the Fort, within a few rods of the tippes [sic] occupied by his friends, I secured his head in the night of the day he was buried. From the fact he was buried near these lodges, I did not know but what I was suspected in this business, and that it was their intention to keep watch over the body. Believing that they would hardly think I would steal his head before he was cold in his grave, I early in the evening with two of my hospital attendants secured this specimen.[110]

As usual, dark nights were preferred for stealing Indian remains. One collector calculated that he traveled 60 miles at night on foot over a period of time to collect fifteen skulls. "I collected them in a way somewhat unusual: the burial place is in plain sight of many Indian houses and very near frequent roads. I had to visit the country at night when not even the dogs were stirring. . .after securing one [skull] I had to pass the Indian sentry at the stockade gate which I never attempted with more than one, for fear of detection." His adventure deserve fuller consideration:

> On one occasion I was followed by an Indian who did not comprehend my movements, and I made a circuitous route away from the place intended and threw him off his suspicions. On stormy nights-rain, snow or wind & bitter cold, I think I was never observed going or coming, by either Indians or dogs, but on pleasant nights - I was always seen but of course no one knew what I had in my coat. . . .the greatest fear I had was that some Indian would miss the heads, see my tracks & ambush me, but they didn't. I regret the lower maxillae are not on each skull, I got all I could find, and they are all detached save one. There is in the box a left radius & ulna of a woman, with the identical bracelets on that were buried with her. The bones of themselves are nothing, but the combinaton with the ornaments make them a little noticable.[111]

American Indian expression of grief for the dead was, and still is, obvious in the funeral ritual and preparation of the dead. Anthropologist David Bushnell writing in 1927, having surveyed the historical literature on the burial practices of the Siouan, Caddoan and Algonquin peoples, confirmed the importance of funerary rites for these tribes.[112] Great ritual care was expended in preparing the dead and providing for their future spiritual existence. Among some groups like the Aleutian Islanders, "'they embalm the bodies of the men with dried moss and grass; bury them in their best attire, in a sitting posture, in a strong box, with their darts and instruments; and decorate the tomb with various coloured mats, embroidery and paintings.'" For some, it was difficult to give up the dead. "'A mother will keep a dead child thus embalmed in their hut for some months, constantly wiping it dry; and they bury it when it begins to smell, or when they get reconciled to parting with it.'"[113]

One sea captain, sailing for the Alaska Commercial Company, learned from the Aleuts living on an island north of Ounalaska of a burial cave on Kagamale Island. Curious, and thinking he could make a contribution to science, the captain sought out the cave. His story provides a memorable account of the care the Indians devoted to their dead.

> The cave smelt strongly of hot sulphurous vapors. With great care the mummies were removed, and all the little trinkets and ornaments scattered around were also taken away. . . .In all there are eleven packages of bodies. Only two or three have as yet been opened. The body of the chief is inclosed in a large basket-like structure, about four feet in height. Outside the wrappings are finely-wrought sea-grass matting, exquisitely close in texture, and skins. . . .The body is covered with the fine skin of the sea-otter, always a mark of distinction in the internments of the Aleuts. . .The bodies of a pappoose and of a very little child, which probably died at birth or soon after it, have sea-otter skins around them. . . .The relics obtained with the bodies include a few wooden vessels scooped out smoothly; a piece of dark, greenish, flat stone, harder than the emerald, which the Indians use to tan skins; a scalp-lock of jet-black hair; a small rude figure, which may have been a very ugly doll or an idol; two or three tiny carvings in ivory of the sea-lion, very neatly executed, a comb, a necklet made of birds' claws inserted into one another, and several specimens of little bags, and a cap plaited out of sea-grass and almost water-tight.[114]

It should also be noted that Indians attached great significance to the bones of their departed kin. Bones were removed from scaffolds, carefully bundled and buried. A Mandan example is illustrative of this care.

> An Indian who resided on the Mississippi hearing that his son had died at this spot, came up in a canoe to take charge of the remains and convey them down the river to his place of abode, but on his arrival he found that the corpse had already made such progress toward decomposition as rendered it impossible for it to be removed. He then undertook, with a few friends, to clean off the bones. All was scraped off and thrown into the stream, the bones were carefully collected into his canoe, and subsequently carried down to his residence.[115]

Examples could easily be multiplied of the respect Native Americans bestowed on the bones of their departed. Thus when Indians found the graves of their dead desecrated, the parts or all of the skeleton missing, there was undoubtedly anguish and acute emotional suffering as one would naturally expect in any culture that loved and respected the dead and clothed their departure in religious ceremony. "The violation of the grave was always regarded as an offense of the first magnitude and provoked severe revenge." As a Captain Belcher pointed out regarding one tribe on the Northwest Coast: "'Great secrecy is observed in all their burial ceremonies, partly from fear of Europeans, and as among themselves they will instantly punish by death any violation of the tomb or wage war if perpetrated by another tribe, so they are inveterate and tenaceously [sic] bent on revenge should they discover that any act of the kind has been perpetrated by a white man.'"[116]

Perhaps the saddest account of museum sponsored "grave robbing" is that of Minik, an Inuit (Eskimo). Boas, when on the staff of the American Museum of Natural History, requested of the

Arctic explorer, Robert Peary, to bring back an Inuit who could remain in the U.S. for a year a two. Peary brought back six. Within months four of them died. One, of the two remaining, made his way back to his Greenland. Mimik, the other survivor and the youngest of the group, was raised as an orphan in New York City. When Mimik's father--one of the original six Inuit--died, a mock funeral was held on the Museum's grounds in order to convince the young Mimik that proper funeral rituals were being observed and that his father was buried according to Inuit custom. Neither Mimik's father nor any of other Inuit, however, were buried but were "processed," along with a eleven year old Inuit girl from Alaska, in upstate New York and their bones returned to the American Museum of Natural History. When a teenager, Mimik inadvertenly discovered that his father had not been buried in the museum ceremony and that his father's bones were on display in the museum. Through several years of severe depression brought on by this knowledge, Mimik tried to reclaim his father's bones for burial but his petitions were denied.[117]

As the Mimik's case and that of the young Alaskan Inuit girl who died became known to the public, there was an outcry. Letters and articles accused the Museum of insensitivity and illegal possession. One angry correspondent argued that the young girl had not willed herself to the Museum. "'Except in the cases in which a right to dissect is expressly conferred by law, 'says section 306 of the Penal Code 'every dead body of a human being, lying within this State, must be decently buried within a reasonable time after death.' And the same statute imposed the requirement of burial in respect to the remains of a human body after dissection."[118]

In responce to such criticism, a Dr. Bern B. Gallaudet of Columbia University, lashed back, "We think the body of the girl will be an interesting study--an Eskimo, you know--and we would like to examine the internal organs to see how they compare with those of persons reared under other conditions and in other climates. Just what will be done with the body I don't know, but we. . .can do what we please with it.'" As Boas would say, it "'is in the interest of science.'"[119]

Looking back on the nineteenth century, it is now possible to delineate certain trends in the study of the Native Americans. To some, Indians were less than human; they were an inferior species doomed to extinction. To others, who represented the majority at least among scientists, the Indian was merely a childlike barbarian who had yet to grow to the adulthood of civilization. As the formost anthropologists of the late nineteenth century put it, "they have the skulls and brains of barbarians, and must grow toward civilization. . ."[120]

Either way, crania collections were considered necessary. If one accepted the first premise, than Indian skulls should be represented in museums along with the skeletal remains of other creatures who had passed into extinction. If one accepted the second premise, then Indian skulls were needed to aid the scientists and the government to facilitate learning more about the capabilities of Indians through cranial measurements. While it seemed impossible to learn how long Indians had lived in the Americas--the techniques to discover micro culture change were still not worked out in American archaeology--measurement of Indian skulls at least seemed to offer a way to predict the racial potential of the Indian to achieve civilization. As one writer on the history of physical anthropology noted, "during the nineteenth century, physical anthropology established its classic techniques for measuring the human form; they remained the primary instruments for its research until well into the twentieth century." By the end of the nineteenth century a greater sophistication in statistics and use of samples developed. To draw their conclusions, physical anthropologists (both in osteometry and anthropometry) continued to need larger and larger collections of "data."[121] The digging, buying or stealing of skulls and other skeletal remains continued. Physical anthropology still remained focused on questions of race.[122]

Yet by the turn of the century within the field of anthropology, criticism regarding the value of cranial measurement began to mount. Although not a decisive indicator, the Army Medical Museum in 1898 transferred to the U. S. National Museum over 2000 crania.[123] More significant was the criticism of Franz Boas. Boas, who, as noted, actively collected human remains, openly questioned in 1894 the usefulness of osteological collections. He admitted that even though much of the then current anthropological knowledge was based primarily on collections such as the Morton collection at the Academy of Natural Sciences in Philadelphia, the prehistoric collection at Peabody Museum in Cambridge and the largest collection of all at the U.S. Army Medical Museum, none were sufficient to "delineate in a satisfactory manner the distribution of types of man in North America. . . . Investigations on osteological material, particularly on material collected among modern tribes, are always unsatisfactory in that the identification of the skull, regarding its tribe and sex, often remains doubtful." He added that questions also remain as to whether the skulls belonged to full-bloods or to "half-breeds." "It appears, therefore, that for a more thorough investigation of the anthropology of North American Indians an investigation on living individuals is indispensable."[124]

Yet even working with living subjects had its dangers as Boas discovered in 1891. Attempting measurements of Worcester school children, Boas was vilified in the local press "which was horrified that an 'alleged anthropologist' with 'visage seamed and scarred from numerous rapier slashes' might contaminate the unclothed innocents of Worcester."[125] Indians, however, without access to the press and public opinion were compelled to submit to measurement by government pressure.[126]

COLLECTING IN THE TWENTIETH CENTURY

In the twentieth century, the infatuation with statistics continued as extensive measurements of Indian (and other races) were published in journals like Biometrika. Physical anthropology, as one of its practioners defined it, "is a system of techniques. It is the systematized art of measuring and taking observations on man, his skeleton, his brain, or other organs, by the most reliable means and methods, for scientific purposes."[127]

Although this paper is not meant to be a social-scientific history of the period, it cannot be ignored that the early twentieth century was a period of heightened American awareness of ethnicity and race. Concern over immigration from southern and eastern Europe frightened many Americans who viewed these "unwashed masses" surging into eastern cities with alarm. Fears of "bad-blood" diluting good Yankee stock prompted Congress to pass immigration restriction legislation.[128] While the govenment was deciding on what kind of people to let into the country and from where, Congress nodded to the original Americans--who were not doing a good job in disappearing--and made them citizens.

In the 1920s racial and ethnic fears combined with a fear of communism and prompted research in how to identify with more precision racial types. More exact body and head measurements seemed to offer an answer. During the 1930s, those seeking status as Indians in order to qualify for Bureau of Indian Affairs programs in areas such as school aid and health care were measured by physical anthropologists to determine whether they were true Indians or "half-breeds." The criteria of who was an Indian was biological and was drawn from Indian skulls in museums and university collections.[129] As Karen Blu in her book on the Lumbee notes, anthropologists William C. Sturtevant and Samuel

Stanley criticized this "pseudo-biological criterion" for identifying Indians as "both arbitrary and misleading."[130]

> Legal and culture criteria here [in defining Indianness] as elsewhere are supposedly biological ('racial') but the fact that the actual criteria are social (caste-like and in terms of self identification) is made very obvious by the complex modern situation in the Eastern States. . . .It would be most unfortunate to strengthen the popular American definition of social caste membership as based on biological criteria; what should be attempted is to increase the recognition that such criteria are either false, or harmful and antidemocratic.[131]

It is possible that the continued reliance on biology--head measurements and shape of Indian skulls--helped to perpetuate the racial classification and stigmatization of Indians in the public mind.

In the early twentieth century, a recent scholar observes, "class differences were often viewed in racial terms and scientifically justified on biological grounds."[132] The eugenic movement sought to control the direction of human--and hence social--change. This was to be the great hope for humankind.

> From now on evolution will no longer be left entirely to nature, but it will be assisted. . .and even regulated by man himself. This is into what we are coming, and I think it will be one of the greatest manifestations of humanity - the fact of assisting intelligently in its own evolution along the right lines, and thereby doing away with the immense waste which would otherwise happen. . .This particular line of activity is known to-day under the name of Eugenics, which is not, as is often supposed, a separate branch of science; it is merely applied anthropological and medical science - applied for the benefit of mankind. . .[133]

In 1939, a few years before Nazi experiments with shaping humanity were performed, the American physical anthropologist, Ales Hrdlicka, himself an immigrant from Bohemia, announced:

> Some day some state will become enlightened enough to institute, as a regular and important part of its existence, periodical--say 50 year--anthropometric surveys of its population, to ascertain whether and how its human stock is progressing or regressing, both as a whole and in various environmentally or otherwise different parts of its territories. . . .Aside of Russia no country is more suitable for this purpose than the U.S.A. There are not only great regional and environmental differences in the abodes of the American population, but also difference in blood, economical conditions, and habits. There are plain evidences already that the American population is not developing physically equally in all the regions, but sufficient and reliable data on the subject and on the progress of matters can only be secured by a definite, periodic anthropometric census of the population.[134]

Hrdlicka did not state what the criteria of perfect human stock would be or who would make the decision! He did, however, vigorously advocate the training of physical anthropologists and the collecting of skeletal material. Hrdlicka, himself, was very active in collecting Indian remains in Alaska where he often encountered Indian resistence and un-coōperativeness.[135]

For awhile after 1940, skeletal remains became less important in physical anthropology.[136] The cause is unclear but may be rooted in the reaction to Nazi human experiments and creation of skeletal museums. This does not mean that archaeology and collecting of Indian skeletal remains no longer continued. It did but the acquisition of Indian physical ramains seemed a low priority. In a recent article, Douglas H. Ubelaker and Lauryn Guttenplan Grant, point out that "in the Plains area of the United States. . .in the middle to late 1950's most archaeologists did not bother to preserve human skeletal remains, apparently for lack of awareness of their research value."[137]

Recently Indian skeletal remains have drawn greater attention as research priorities have changed.[138]

From the perspective of today, it is possible to see that anthropology (or the science that was to become anthropology) thoughout the eighteenth and nineteenth centuries--but even into the twentieth century--not only shared the racial assumptions of the general public, but often reinforced and promoted those racial views with its findings. The choice of theories to pursue, the data collected, the investigations conducted and conclusions reached were often generated by the racial concerns prevalent in the society in which the scientist worked and to which he or she undoubtedly subscribed.[139]

It is, of course, granted that this is only natural, but the results of these investigations leave a residue of old ideas or discarded assumptions as science moves on in different directions. The residue of old theories, still carry heavy social and emotional costs for some minorities such as the American Indian. This is especially true in the area of racial studies where out-of-date ideas continue with a folklore-like authority to shape popular thought and measure public response. Native American remains lying in display cases or stored in back rooms of museums, universities and historical societies, can symbolize for Indians a long chapter of insensitivity and racial bias and for non-Indians fuel public disrespect. In their continued display the social and psychological costs are great not only for Native Americans but for all Americans. The displays promote within the general public a perception that Indians can be so exhibited because they are different and that difference, for many, is rooted in a sense of Indian cultural and perhaps physical inferiority. In a world that needs and seeks tolerance, the holding of Indian remains and their tasteless display sends a negative message freighted with lingering racial overtones and prompt both pain and anger in Native Americans.

THE CURRENT SITUATION

The rising tide of anger over what many Indians see as the desecration of their ancestors prompted some scientific organizations to rethink the whole issue and formulate policies that would both safeguard their own research objectives and also meet many of the Indians' demands. The Department of Interior, the National Park Service, the United States Forest Service, the Council on Historic Preservaton along with some states, are just a few of the organizations and government bodies that, along with the American Association of Museums, have begun to move in this direction.[140]

The Council of the American Association of Museums announced in January of 1988, that as part of this new policy "in cases where the methods of acquisition of remains may have been technically legal at the time of acquisition but which may have been unethical by standards either then or by standards since, museum should weight both legal and ethical considerations when considering requests for repatriation and discuss with the requesting parties the specifics of these considerations. . ." The policy further stated that "unless there are compelling and overriding reasons to retain human remains under these conditions, museums should work with legitimate Native American descendants to return such remains."[141] Although many Indians consider this a step in the right direction, they feel the policy does not go far enough. Who, for example, determines what is "compelling" and "overriding"?[142]

Complicating this issue even more is the wide range of scientific responses to the repatriation issue. Symptomatic of this state of affairs are the spate of articles arguing pro and con on the issue.[143] One of the many articles is "Skeletons in Our Museums" by Douglas J. Preston. When this article appeared in the February 1989 issue of Harper's Magazine it attracted the attention of the museum community. The article focused on the large osteological collection in the American Museum of Natural History, and raised significant ethical issues and some troubling questions. [144]

In a letter to Harper's Magazine, Robert McCormick Adams, Secretary of the Smithsonian Institution, acknowledged Preston's "fair minded analysis" and pointed out that the issue of repatriation was complicated and freighted with legal as well as ethical considerations. Adams pointed out that while the Smithsonian's policy on repatriation of bones was still evolving, "known descendants, under both law and elementary morality, have the prerogative of reclaiming and reburying their ancestral remains. Although the attempt to establish the link of descent often requires patient work with old, ambiguous documents, the right of reburial is clear." Adams acknowledged that the Smithsonian Institution "deeply regrets the circumstances in which too many of those remains were acquired," he resisted, however, the call by a tribal attorney to curtail the activities of physical anthropologists. "Apparently he [the lawyer] is among those who think that the claims of a particular religion--unsupported by an established legal standing such as demonstrated descent--should supercede the claims of science. . ."[145]

Adams's letter brought a response from Raymond D. Fogelson, professor of anthropology at the University of Chicago who took exception.

> The insistence on "known descendants," "links of descent," ascertainment of tribal affiliation, and continuity of residence begs several questions. First, it assumes that Native Americans routinely reckoned descent beyond three generations and traced family lines in a manner comparable to Euro-American genealogists. Second, the statement implies that "tribes" were primordial forms of social organization and not the product of Indian-White historical interaction. Third, proof of residential continuity seems an unduly restrictive criterion for release of skeletal remains. . . .Secretary Adams clearly does not deny the collective identity of the prehistoric and historic bones in question as ancestral to contemporary Native Americans. This, it seems to me, should be the central premise on which policy should be based. In the vast majority of cases where specific identification cannot be made, the bones should be returned for proper reburial to responsible Indian organizations in the regions where they were first discovered. . . .As an anthropologist with some training in physical anthropology, I believe the scientific justification for retaining Indian skeletal remains is exaggerated. Anthropometric measurements and use of modern photometric and x-ray techniques before reburial can form a data base for most physical anthropological research. Procedures for dating bones and for reconstructing diet, which require destruction of osseous material should only be undertaken with informed consent of responsible Indian organizations. Negotiations with such organizations to release small samples of bones may be possible, if they can be convinced of the relevance of such research. . . .Ethnological and archaeological investigations indicate that many Native American groups endowed skeletal remains with special spiritual significane. Bones were believed to be imbued with power and vital properties. At the risk of being rebuked as a religionist and a traitor to positivistic science, I believe the religious rights of Native Ameicans past and present should be respected and in this

> instance "supersede the claims of science in dictating the contents of a natural history museum." Can a nation that erects tombs to unknown soldiers, that spares no effort to retrieve unindentified bones of those missing-in-action in Korea and Viet Nam not appreciate the concerns of Native Americans whose ancestors remain as spiritual hostages in natural history museums?[146]

Altough Fogelson's leter was never pubished it was circulated at the Smithsonian Museum where it evoked concern. Considered a harbinger of an anti-science drift among "fellow anthropologists," Fogelson's letter, for some, adumbrated the opening of a "door to a whole series of anti-scientific, religiously based initiatives that would undermine future scientific research in several anthropological disciplines."[147] Unfortunately, this misrepresents the issue. The issue is not anti-science nor anti-intellectualism; the issue is who should have control over the Native American remains and the power to decide how they should be handled.

This report has attempted to elucidate--in accordance with the policy set forth by the Council of the American Association of Museums as noted above--the unethical and perhaps illegal conduct practiced in collecting Indian remains in the past. Undoubtedly, most Indians, like non-Indians, strongly objected to the molesting and desecration of the graves of their deceased. The ethnographic literature notes that such an offence by a tribal member was met with horror and deadly reprisal. Such behavior was considered unethical from a religious point of view and an insult to the dead. With the limited means available, Indians attempted--and the documented cases can be easily multiplied beyond those noted in this report--to guard against such pillage of their graves by non-Indians. But the report also demonstrates that "grave robbing" for medical research or other purposes was both distasteful and illegal in Euro-American society. This still appears to be true.

Arguments throughout the nineteenth century emphasized that Indian remains--along with those of blacks and whites--were necessary for science. Yet as it has been noted above, and in other sources, such "science" tended to victimize both Indians and blacks by justifying public intolerance and prejudice toward them.[148] Government Indian policy, during this time, seemed little affected by the analysis of Indian remains despite the expectations of S. P. Langley of the Smithsonian Institution.

By inclination, if not by training, most anthropologists and archaeologists, are sensitive to Indian feelings and concerns. Some noted archaeologists have recently questioned the need for the continued collection of Indian skeletal remains.[149] Others have sugested that permission should be sought from tribal groups to dig, examine the bones and then return them to the tribe for reburial. Most are against the disturbance of graves by "amateur archaeologists" or "pot hunters" who wantonly blitz burial grounds emptying graves, scattering and destroying remains solely for profits they can reap from private collectors both here and abroad. The often cavalier attitude toward Indian remains that dominated earlier archaeology is beginning to give way as new codes of ethics are drawn up by anthropological and archaeological organizations and a greater sensitivity to Native American feelingsis displayed in American society.[150]

Today the bones of all races are used in research. Yet the perception continues among Indians and others that certain races are targeted for study. This perception is very real because of the history of Indian grave robbing and the belief that the largest collection of osteological remains in museums and universities are Native American. This imbalance and the callous, disrespect still often accorded to Indian bones in many institutions continue to aggravate Native American sensibilities.

At Pow wows today, the "Give-a-way" dance is an important part of the social gathering. Native American cultures have a long history of generosity. Even when dispossessed of their lands, they have fought in America's wars and served the country in peace time. Indians, like all races, do not want to retard real scientific progress which has the potential of helping all peoples, but they do demand the respect and consideration that is due to them as a people and as part of humanity. Many Native Americans may be willing to contribute to scientific and medical research but they want to be asked. Today Native Americans demand, as do other groups, that permission be sought and granted before experiments and research begins.

The respect and honor of their dead has for them, as for most people, a real religious dimension. Their right to religion is not a right that the government can grant, it is a human right, but the government does have the responsibility, the obligation, to safeguard this right as it does for other races and religions. A part of this religious right is the protection of human remains and the graves of the dead.

Endnotes

APS	American Philosophical Society
MHS	Massachusettss Historical Society
LCP	Library Company of Phildelphia
MCZ	Museum of Comparative Zoology, Cambridge
NA	National Archives
BAE	Bureau of American Ethnology
AMM-NAA	Army Medical Museum-National Anthropological Archives
FM	Field Museum
NMHM	National Museum of Health and Medicine

1. Thomas Jefferson, *Notes on the State of Virginia*. (New York: Harper & Row, 1964), 92-96.

2. For a discussion of this see: Robert E. Bieder, *Science Encounters the Indian, 1820-1880*. (Norman: University of Oklahoma Press, 1986), chap. one; William L. Joyce, "Antiquarians and Archaeologists: The American Antiquarian Society 1812-1912," *Proceedings of the American Antiquarian Society*, 91, pt.2 (1982): 301-317; Antonello Gerbi, *The Dispute of the New World: The History of a Polemic, 1750-1900*, rev. ed., trans. Jeremy Moyle. (Pittsburgh: University of Pittsburgh Press, 1973).

3. Benjamin Rush, "Lecture IV on the Influence of Physical Causes. . .Delivered November 18th, 1799" in Benjamin Rush, *Two Essays on the Mind*. (New York: Brunner/Mazel, 1972), 117-18, emphasis in original.

4. Samuel Stanhope Smith, *An Essay on the Causes of the Variety of Complexion and Figure in the Human Species*. ed. Winthrop D. Jordan. (New Brunswick, 1810; Cambridge: Harvard University Press, 1965), 241, emphasis in original.

5. Samuel F. Haven, *Archaeology of the United States*. (Washington, D. C., 1856; New York: AMS Press, 1973), 74-75.

6. See Johann Friedrich Blumenbach, *On the Natural Varieties of Mankind*. (1775; London, 1865; New York: Bergman, 1969).

7. On Camper and Blumenbach, see John C. Greene, *The Death of Adam*. (Ames: Iowa State University Press, 1959) and Paul Erickson, "The Origins of Physical Anthropology," (Ph.D. Diss., University of Connecticut, 1974).

8. On phrenology, see Bieder, 59-80 and David De Giustino, *Conquest of Mind: Phrenology and Victorian Social Thought*. (London: Croom Helm, 1975).

9. William Boyd Powell to Samuel G. Morton, 8/12/1839, APS.

10. Bieder, 55-64.

11. Samuel Hildreth to S. G. Morton, 2/12/1833; 6/20/1833; 3/5/1834, APS.

12. Edward Herrick to S. G. Morton, 2/3/1837, APS.

13. S. G. Morton to John C. Warren, 2/27/1837, MHS, his emphasis.

14. Gerald Troost to S. G. Morton, 3/4/1837, APS.

15. Zina Pitcher to S. G. Morton, 3/4/1837, APS.

16. John C. Bachman to S. G. Morton, 3/17/1837, APS.

17. Maximilian Wied-Neuwied to S. G. Morton, 5/2/1837, APS.

18. Prince Maximilian of Wied-Neuwied, *Travels in the Interior of North America*. in Reuben Gold Thwaites, *Early Western Travels*. vol. 22. (Cleveland: Arthur H. Clark, 1906), 173-79.

19. Powell to S. G. Morton, 8/12/1839, APS.

20. Galiotti to S. G. Morton, 12/27/1841, LCP.

21. Alton to S. G. Morton, 7/22/ 1845, LCP.

22. Douglas Houghton to S. G. Morton, 11/21/1837, APS.

23. Samuel G. Morton, *Crania Americana; or, A Comparative View of the Skulls of Various Aboriginal Nations of North and South America, to which is Prefixed an Essay on the Varieties of the Human Species*. (Philadelphia: n.p., 1839).

24. George C. Combe, *A System of Phrenology*. 3rd American ed. (Boston: Marsh, Capen and Lyon, 1835), 574.

25. *American Phrenological Journal and Miscellany*. 3 (1841):209.

26. Bieder, 1986, 66; Henry R. Schoolcraft to _____ , 8/21/1826, NA).

27. Cooper to S.G. Morton, 2/5/37, APS.

28. *A Catalogue of Phrenolgical Specimens Belonging to the Boston Phrenological Society*. (Boston: John Ford, 1835), 6-7.

29. *Ibid*., 28-30.

30. Orson S. Fowler, *Practical Phrenology*. (New York: Fowler and Wells, 1856), 29-30.

31. *Ibid*., 29.

32. See for example, Louis Leonard Tucker, "'Ohio Show Shop': The Western Museum of Cincinnati, 1820-186," in *A Cabinet of Curiosities*. (Charlottesville: University of Virginia, 1967), 73-105.

33. Edward Lurie, *Louis Agassiz: A Life in Science*. (Chicago: University of Chicago Press, 1960), 304.

34. *Ibid*., 338.

35. Combe, 573.

36. Joseph C. Ives, *Report on the Colorado River of the West*. (1857-58). 36th Cong., 1st sess., 1861, Sen. Exec. doc. 90. pp. 97-98.

37. John Bradbury, *Travels in the Interior of America in the Years 1809, 1810, and 1811*. in Reuben Gold Thwaites, *Early Western Travels, 1748-1846*. 5 (1819; Cleveland: Arthur and Clark, 1904), 160.

38. Jean Louis Berlandier, *The Indians of Texas in 1830*. (Washington: Smithsonian Institution, 1969), 98; Lewis Henry Morgan, *Lewis Henry Morgan: The Indian Journals, 1859-62*. ed. Leslie A. White. (Ann Arbor: University of Michigan, 1959), 171.

39. John K. Townsend, *Narrative of a Journey Across the Rocky Mountains, to the Columbia River*. in Ruben Gold Thwaites, *Early Western Travels*. 21 (1839; Cleveland: Arthur H. Clark, 1905), 309-10.

40. *Ibid*., 361-62, his emphasis.

41. Thomas J. Franham, *Travels in the Great Western Prairie, The Anahuac and Rocky Mountains, and in the Oregon Territory*. in Reuben Gold Thwaites, *Early Western Travels*. 28 (Cleveland: Arthur H. Clark, 1906), 367-68.

42. Paul Wilhelm, Duke of Württemberg, *Travels in North America, 1822-1824*. (Norman: University of Oklahoma Press, 1973), 320.

43. Berlandier, 98; see also Stephen Powers, *Tribes of California*. (Berkleley: University of California Press, 1976), 30,34 and passim.

44. Willard A. Heaps, *Riots, U.S.A.*. rev. ed. (New York: Seabury Press, 1970), 19-21.

45. Ibid., 28-29.

46. North American Review. (1860): 470-71.

47. Robert J. Braidwood, "Archaeology and the Evolutionary Theory," in Evolution and Anthropology: A Centennial Appraisal, Betty J. Meggers, ed. (Washington: Anthropological Society of Washington, 1959), 84. See also, Gordon R. Willey and Jeremy A. Sabloff, A History of American Archaeology. (San Francisco: W. H. Freeman, n.d.), Chaps. 2 & 3.

48. Walter W. Taylor, A Study of Archeology. Memoir 69 of the American Anthropological Association (1948), 23.

49. Braidwood, 77. Carol Ann Bassett, "Cultural Thieves: Are We Helping Them Loot the Past?" Science 86 7 (July-August 1986): 22-29. For another recent critique of non-professional archaeologists, see Douglas H. Ubelaker, Human Skeletal Remains: Excavations, Analysis, Interpretation. 2nd ed. (Washington: Taraxacum, 1989). "I studied two series of skeletons from archaeolgical sites in the New World. Both had been excavated by non-professionals over extended periods with limited funding. The field notes were largely confined to a dialogue of who-did-what-when. Descriptions of artifacts postions and dimensions were the dominant features at both sites, were almost non-existent. Several burials labelled secondary interments were accompanied by sketches of primary flexed skeletons. The photographs revealed little about burial position because the soil had not been properly removed. Not all the bones had been saved and those from different individuals were sometimes co-mingled, apparently reflecting the belief that fragmentary post-cranial remains cannot provide useful information. . . . Unfortunately, cases like those I encountered are common. Many professional archaeologists lack familiarity with the human skeleton and do not record the kinds and amounts of data that specialists in human skeletal biology require for interpretation." (From the preface) The conclusion seems to be that this was a useless disturbance of a grave site.

50. C. William Clewlow, "Some Thoughts on the Background of Early Man, Hrdlicka, and Folsom," in Kroeber Anthropological Society Papers, 42-43 (1970): 26-46.

51. Douglas Cole, Captured Heritage: The Scramble for Northwest Coast Artifacts. (Seattle: University of Washington Press, 1985), chap. 3.

52. Tom D. Crouch, "Moorehead, Warren K. 1866-1939," in History of Indian-White Relations: Handbook of North American Indians 4 (Washington: Smithsonian Institution, 1988):670; Patricia S. Essenpreis and Micahel E. Moseley, "Fort Ancient: Citadel or Coliseum? Past and Present Field Museum Explorations Of a Major American Monument" Field Museum Natural History Bulletin 55 (June 1984): 20-21.

53. Warren K. Moorehead, "Report to World's Columbian Exposition about Moorehead Expedition in Ohio," (1892):1 Ms., FM.

54. *Ibid*., 3.

55. *Ibid*., 4-5.

56. *Ibid*.

57. *Ibid*., 8.

58. *Ibid*., 6-10.

59. Warren K. Moorehead, "Explorations at the Mouth of Caesar's Creek," (1892): 17, Ms., FM.

60. *Ibid*., pages unnumbered.

61. *Ibid*.

62. See Patricia Sue Essenpreise, "The Anderson Village Site: Redefining the Anderson Phase of the Fort Ancient Tradition of the Middle Ohio Valley," (Ph.D. diss., Harvard University, 1982); and Essenpreise and Moseley, 5-26.

63. "Extracts from Letter of W.K. Moorehead to Dr. Dorsey, dated June 2, 1898." Ms., and Moorehead to Dorsey June 25, 1909, FM. See also letters: Dorsey to Clinton Cowan, December 8, 1909; Clinton Cowan to C.L. Owen, Dec. 8, 1909; Charles L. Owen to G.A. Dorsey, September 29, 1910; Dorsey to F.J.V. Skiff, October 27, 1910; and May 7, 1911, FM.

64. Aldona Jonaitis, *From the Land of the Totem Poles: The Northwest Coast Indian Art Collection at the American Museum of Natural History*. (Seattle: University of Washington Press, 1988), 57-69; Cole , 80.

65. Ronald P. Rohner, *The Ethnography of Franz Boas*. (Chicago: University of Chicago Press, 1969), 88.

66. Cole, 119-120.

67. *Ibid*., 120.

68. *Ibid*.

69. *Ibid*., 120-21.

70. *Ibid*., 121,168.

71. *Ibid*., 169,174-76.

72. *Ibid*., 170.

[illegible]

74. *Ibid.*, 171.

75. Quoted in Cole, 172-73.

76. Cole, 73-74.

77. Quoted in Cole, 174-75.

78. Cole, 175-76.

79. *Ibid.*, 171.

80. See Correspondence Charles F. Newcombe to George A. Dorsey, 1897-1923, but particularly three notes from Newcombe to Dorsey dated 12/3/1902. Charles F. Newcombe Papers, FM. In a recent article, Jonathan Haas, vice president of collections and research at the Field Museum, was "sharply critical" of proposed "federal legislation that would require museums to return Indian remains and other objects to tribal groups for reburial or repatriation." According to Haas, the Field Museum is "'bound by the laws of Illinois' and may have a 'feduciary responsibility' to retain some of the art'facts in the collection." See Bill McAllister, "Panal Sides With Indians: Proposes Legislation to Return Remains, Artifacts," *Washington Post*, March 1, 1990, B2.

81. Newcombe to Dorsey, 3.12/1901, FM. The quote is from Cole, 309.

82. Cole, chaps. 2 & 3; Newcombe to Dorsey, 9/14/1907, where Newcombe mentions the the totem pole he sent to Bremen. FM.

83. Cole, 310-311.

84. "Memorandum for the Information of Medical Officers'" September 1, 1868. Quoted in D. S. Lamb, "A History of the United States Army Medical Museum: 1862-1917," n.d., Ms. 56-56b, NMHM. See also D. S. Lamb, "The Army Medical Museum in American Anthropology," *Proceeedings 19th International Congress of Americanists*. (Washington, 1917): 625-32.

85. Lamb, "Army Medical Museum," 628. See also Lamb, "A History."

86. G. T. Hachenberg to the Surgeon General, 10/20/1879, Box 6, AMM-NAA.

87. For example see Alfred Muller to the Surgeon General, 3/26/1866, Box 1, AMM-NAA.

88. B. E. Fryer to G. A. Otis, 2/12/1869. See also B. E. Fryer to G. A. Otis, 3/11/1869, AMM-NAA.

89. S. M. Horton to_____ , n.d., Box 4, AMM-NAA.

90. W. Matthews to S. Millings, 6/16/91, Box 8, AMM-NAA, his emphasis.

91. Franz Boas to John L. Billings, 4/6/1887, 4/23/1887, 5/6/1887, Box 7, AMM-NAA.

92. William A. Collins to D. L. Huntington, 6/12/82, Box 6, AMM-NAA.

93. C. H. Martin to_____ , 4/19/1874, Box 4, AMM-NAA.

94. Quoted in Lamb, "Army Medical Museum," 628.

95 Quoted in John S. Haller, *Outcasts from Evolution: Scientific Attitudes of Racial Inferiority, 1859-1900*. (Urbana: University of Illinois Press, 1971), 22.

96. Haller, 19-39.

97. S. P. Langley to W. H. Holmes, December 1902, BAE Correspondence 1889-1908, NAA.

98. Edward B. Moseley (?) to George A. Otis, 4/2/787, Box 6, AMM-NAA.

99. S. P. Hachenberg to______ , 1/8/69, Box 2, AMM-NAA.

100. William Buchmann to the Surgeon General, 2/8/1873, Box 4, AMM-NAA.

101. Henry McElderry to the Surgeon General, 10/25/1873, Box 4, AMM-NAA.

102. W. G. Spencer to Surgeon General, 7/13/1880, Box 6, AMM-NAA.

103. Spencer F. Baird to______ , 6/24/69, Box 3, AMM-NAA.

104. R. S. Vickey to Surgeon General, 2/11/1870, Box 3, AMM-NAA.

105. See a report note dated 6/5/1896, Box 4, AMM-NAA.

106. G. M Horton to George Otis, 8/15/1873, Box 4, AMM-NAA.

107. Note ca. February 1877, Box 2; G. Brown Goode to John Billings, 10/11/1888, Box 7; R. Forrer to [G. Bromelford], 4/18/1889, Box 8, AMM-NAA.

108. H. C. Yarrow, *Introduction to the Study of Mortuary Customs among the North American Indians*. (Washington: Government Printing Office, 1880), 91.

109. ________ to Joseph K. Barnes, 1/18/1869, Box 2, AMM-NAA.

110. S. P. Hachenberg to_______ , two letters both dated 1/18/1869, Box 2, AMM-NAA. A similar account of grave robbing is the presence of Indians is in C. Gamm(?) to C. Crame, 9/15/1872, BOx 4, AMM-NAA.

111. Z. T. Daine to J. S. Billings, 6/27/1892, Box 8, AMM-NAA. For other night grave robbings see, A. I. Comfort to George A. Otis, 12/23/1876, Box 5, AMM-NAA.

112. David Bushnell, *Burial of the Algonquian, Siouan and Caddoan Tribes West of the Mississippi* Smithsonian Institution Bureau of American Ethnology Bulletin 83. (Washington: GPO, 1927).

113. Yarrow, 43.

114. *Ibid*., 43-45.

115. Quoted in Yarrow, 68-69.

116. Quoted in Yarrow, 86-87.

117. Kenn Harper, *Give Me My Father's Body: The Life of Minik, The New York Eskimo*. (Frobisher Bay, NWT: Blacklead Books, 1986), 39-47; 89-101.

118. *Ibid*., 99-100.

119. *Ibid*., 100.

120. Lewis Henry Morgan quoted in Bieder, 241-42.

121. Henry L. Shapiro, "Physical Anthropology," *International Encyclopedia of the Social Sciences*. 12 (1968):87.

122. Daniel G. Brinton, *Anthropology As a Science and as a Branch of University Education in the United States*. (Philadelphia: n.p., 1892); Shapiro, 87.

123. Paul S. Sledzik, "The Army Medical Museum, The Anthropological Society of Washington, and the *American Anthropologist*: A Brief History," Unpublished paper presented at the 88th Annual Meeting of the American Anthropological Association, 1989, 5.

124. Franz Boas quoted in George W. Stocking, ed., *The Shaping of American Anthropology, 1883-1911: A Franz Boas Reader*. (New York: Basic Books, 1974), 191-92.

125. George W. Stocking, *Race, Culture, and Evolution: Essays in the History of Anthropology*, (New York: Free Press, 1968), 170-71.

126. See for example Albert Ernest Jenks, Indian-White Amalgamation: An Anthropometric Study, The University of Minnesota Studies in Social Sciences #6 (Minneapolis: University of Minnesota, 1916).

127. Shapiro, 87; Ales Hrdlicka, Practical Anthropology. (Philadelphia: The Wistar Institute of Anatomy and Biology, 1939), 50.

128. See John Higham, Strangers in the Land: Patterns of American Nativism 1860-1925, (New York: Atheneum, 1966).

129. See Orlan J. Svingen, "History of the Expropriation of Pawnee Indian Graves in the Control of the Nebraska State Historical Society," (January 1989) for a summary account of archaeology for Kansas and Nebraska. Ms in possession of Native American Rights Fund and the author.

130. Karen Blu, The Lumbee Problem: The Making of an American Indian People, (Cambridge: Cambridge University Press, 1980), 244, note 7.

131. Ibid.

132. Michael L. Blakey, "Skull Doctors: Intrinsic Social and Political Bias in the History of American Physical Anthropology," Critique of Anthropology 7 #2 (1987): 9-12.

133. Ibid., 13.

134. Hrdlicka, 100.

135. Gordon L. Pullar, "The Hrdlicka Legacy and Koniag Spirits," Unpublished paper presented at the Circum-Pacific Prehistory Conference 1989. For Hrdlicka's interpretation see, Ales Hrdlicka, "The Ancient and Modern Inhabitants of the Yukon," in Explorations and Field Work of the Smithsonian Institution in 1929, (Washington: Smithsonian Institution, 1930), 137-46; "Anthropological Survey in Alaska," Forty-Sixth Annual Report of the Bureau of Indian Affairs to the Secretary of the Smithsonian Institution 1928-1929, (Washington: Smithsonian Institution, 1930); "Anthropological Work on the Kuskokwim River, Alaska," in Explorations and Field Work of the Smithsonian Institution in 1930, (Washington: Smithsonian Institution, 1931).

136. Shapiro, 88-89.

137. Douglas H. Ubelaker and Lauryn Guttenplan Grant, "Human Skeletal Remains: Preservation or Reburial?" Yearbook of Physical Anthropology 32 (1989): 252.

138. Ibid., 252-53.

139 Bruce Trigger, "Archaeology and the Image of the American Indian," *American Antiquity* 45 (1980): 662. See also Joseph C. Winter, "The Way to Somewhere: Ethics in American Archaeology" in Ernestene L. Green, ed., *Ethics and Values in Archaeology* (New York: Free Press, 1984), 36-47.

140. Ubelaker and Grant, 260-63; 272-280.

141. *AVISO*, #3 (March 1988):5, my emphasis.

142. Gustaaf Houtman, "Human remains and the Vermillion Accord," *Anthropology Today* 6 (1990): 23-24; Ubelaker and Grant, 262. For the Vermillion Accord, see Michael Day, "Archaeology Ethics and the Treatment of the Dead," *Anthropology Today*, 6 (1990): 15-16.

143. For a listing of some of these articles, see Ubelaker and Grant; Green; and Eliot Marshall, "Smithsonian, Indian Leaders Call a Truce," *Science* 245 (September 1989): 1184-1186. As early as 1906 Congress passed laws protecting Indian grave sites but in the process Indian remains became national resources. See "An Act For the preservation of American antiquiutes, U.S., *Statutes at Large* 34, Part 1, 225; and U.S. Congress, *Archaeological Resources Protection Act of 1979*, 96th Cong., 1st Sess., 1979, 721-728.

144. Douglas J. Preston, "Skeletons in Our Museums," *Harper's Magazine*. 278 (February 1989): 66-76.

145. Robert McCormick Adams, "Bones of Contention," *Harper's Magazine*. 278 (April 1989): 4 & 5.

146. Raymond D. Fogelson to Letters Editor, 17 March 1989, copy in possession of author. For a similar view by another anthropologist, see Lawrence Rosen, "Give American Indian Remains Back to Tribes," *New York Times*, November 15, 1988, p. 30. See also Rosen's article, "The Excavation of American Indian Burial Sites: A Problem in Law and Professional Responsibility," *American Anthropologist*. 82 (1980): 5-27.

147. Don Ortner, to Anthropology curators and unit managers, March 31, 1989, copy in possession of author. A compromise solution was worked out between the Smithsonian Insitution and the Native American Rights Fund who represented several tribes and the National Congress of American Indians in this matter. See "A Sensible Compromise on Indian Bones," *New York Times*, August 26, 1989, 22.

148. Stephen Jay Gould, The Mismeasure of Man, (New York: W. W. Norton, 1981); Thomas F. Gossett, Race: The History of an Idea in America, (New York: Schocken, 1965); Bieder, 1986; Robert E. Bieder, "Scientific Attitudes Toward Indian Mixed-Bloods in Early Nineteenth-Century America," Journal of Ethic Studies, 8 #2, (Summer 1980): 17-30; Robert E. Bieder, Samuel G. Morton: Nineteenth-Century Craniology and the American Indian," Les Américains et les Autres, (Provence: Université de Provence, 1982): 7-19.

149. Fogelson's and Rosen's letters demonstrates this, but see also Robert F. Heizer, "A Question of Ethics in Archaeology - One Archaeologist's View," The Journal of California Anthropology. 1 & 2 (1974):145-51; and also David Hurst Thomas in Preston, 72. See also the collection of articles in Green.

150. See Bassett, 22-29; Harvey Arden, "Indian Burial Grounds: Who Owns Our Past?" National Geographic 175 (March 1989):376-92; Geoffrey Cowley, et. al., "The Plunder of the Past," Newsweek (June 26, 1989):58-60; Vicki Quade, "Who Owns the Past?: Interview with Walter Echo-Hawk," Human Rights 16 (Winter 1989-90): 24-29,53-55; Robert Tomsho, "Indian Burial Site Becomes Big Issue In Little Salina, Kan." The Wall Street Journal, (May 17, 1989): A1-6. David Lindley, "Remains returned to tribe," Nature, 340 (6 July 1989): 9.

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ACADEMIC PREPARATION

Ph.D.	1972	University of Minnesota
M.A.	1965	Indiana University
A.B.	1965	University of New Mexico

BOOKS

Science Encounters the Indian: A Study of the Early Years of American Ethnology, 1820-1880. Norman: University of Oklahoma Press, 1986.

Science Encounters the Indian: A Study of the Early Years of American Ethnology, 1820-1880. Norman: University of Oklahoma Press, 1989, paperback edition.

Contemplating Others: Cultural Contacts in Red and White America. series "Materialien" John F. Kennedy-Institut für Nordamerikastudien Freie Universität Berlin, 1990.

Wisconsin Indian Communities: A Study of Tradition and Change. Madison: University of Wisconsin Press, expected publication 1990.

"Introduction" and Edition, Johann G. Kohl, Kitchi-Gami. Life Among the Lake Superior Ojibway. St. Paul: Minnesota Historical Society, 1985, xiii-xxxix.

CURRENT RESEARCH/WORK IN PROGRESS

A Social-Cultural-Scientific History of the Zoo in America (book)

"The Continuing Historical Significance of Mr. Lewis H. Morgan's Trip to Europe" (article)

Wanderings of an Amateur Scientist: Johan Adrian Jacobsen and the Berliner Gesellschaft für Anthropologie, Ethnologie und Urgeschichte (book) with Hilke Thode-Arora

"The Ethnographic Zoo" (article)

MAJOR ARTICLES

"A Curious Affair: The Boone and Crockett Club and the Founding of the New York Zoological Park," in *Les Etats-Unis Images du Travail et des Loisirs* (Aix-en-Provence 1989): 77-90.

"Comments and Observations on the Writing on American Culture Past and Present," in *The United States and Malaysia: The Socio-Cultural and Legal Experience* Pamela Soddhy, editor (Kuala Lumpur 1988), 6-19.

"Introduction" to Felix M. Keesing, *The Menomini Indians of Wisconsin: A Study of Three Centuries of Cultural Contact and Change*, Madison: University of Wisconsin Press, 1987, ix-xvi.

"Samuel G. Morton: Nineteenth-Century Craniology and the American Indian," *Actes du GRENA Groupe de Recherches et d'Etudes Nord-Americaines 1981* (May 1982), 7-19.

"Anthropology and History of the American Indian," *American Quarterly* 33 (1981), 309-26.

"Annuity Censuses as a Source for Historical Research: The 1858 and 1869 Tonawanda Seneca Annuity Censuses," co-authored with Christopher Plant, in *American Indian Culture and Research Journal* 5 (1981), 33-46.

"The Grand Order of the Iroquois: Influences on Lewis Henry Morgan's Ethnology," *Ethnohistory* 27 (Fall 1980), 349-61

"Scientific Attitudes Toward Indian Mixed-Bloods in Early Nineteenth-Century America," *Journal of Ethnic Studies* 8 (Summer 1980), 17-30.

"From Ethnologists to Anthropologists: A Brief History of the American Ethnological Society," co-authored with Thomas Tax, in *American Anthropology: The Early Years, 1974 Proceedings of the American Ethnological Society*, John V. Murra, editor (St. Paul 1976), 11-22.

"Albert Gallatin and the Survival Enlightenment Thought in Nineteenth-Century American Anthropology," in *Towards a Science of Man, Essays in the History of Anthropology*, Timothy H.H. Thoresen, editor (The Hague 1975), 91-98.

"Kinship as a Factor in Migration," *Journal of Marriage and the Family* 35 (1973), 429-39.

PAPERS

CONFERENCE PAPERS

"A Curious Affair: The Boone and Crockett Club and the Founding of the New York Zoological Park." Conference on Work and Leisure in America, Aix-en-Provence, April 1989. Also given at the World Wildlife Preservation Trust, Jersey, March 1989.

"Indian Youth in the Cities." Conference on America and Youth, Berlin, October 1988. Also given at the University of Genoa, April 1989

"'We Have Lost Our Memory and Have Bad Dreams': Communities of Despair in Territorial Wisconsin." Conference on the Sesquicentennial of Wisconsin Territory, University of Wisconsin-LaCrosse, September 1986.

"American Indians and the Urban Experience." Conference on America at the Beginning of a New Decade, Berlin, June 1981.

"Some Underlying Assumptions in the Writing of American Indian History." Conference on the American Indian Today, Copenhagen, Denmark, November 1980.

"Isaac Hurd, Lewis Henry Morgan and the Ethnology of the Grand Order of the Iroquois." Annual Meeting of the American Society for Ethnohistory, Albany, N.Y., October 1979.

"Scientific Attitudes Toward Indian Mixed-Bloods in Early Nineteenth-Century America." International Congress of Americanists, Vancouver, August 1979.

"Power Without Glory: The Role of Mixed-Bloods on the American Frontier." American Studies Association Meeting, Minneapolis, September 1979.

"The Concept of Degeneration: Early Nineteenth-Century Ethnologists Ponder the American Indian." American Anthropology Association Annual Meeting, Mexico City, November 1974.

"From Ethnologists to Anthropologists: A Brief History of of the American Ethnological Society, 1842-1871." With Thomas G. Tax. American Ethnological Society Annual Meeting, Worcester, 1974.

"Albert Gallatin and the Survival of Enlightenment Thought in Nineteenth-Century American Anthropology." IX International Congress of Anthropological and Ethnological Sciences, Chicago 1973.

OTHER PAPERS

"Nineteenth-century American Ethnology." University of Turin, April 1989.

"The Continuing Historical Significance of Mr. Lewis Henry Morgan's Trip to Europe." University of Vienna, December 1988.

"The Writing of Indian History." University of Vienna, December 1988. Also given at the Kennedy Institute, Free University Berlin, October 1988.

"The Application of Ethnological Theory to Nineteenth-Century Indian Reforms." Victoria University, Wellington, New Zealand, October 1987.

"Indians in Tough City: Urban Reservations." Massey University, Palmerston North, New Zealand, October 1987. Also given in Berlin, June 1981; and at the University of Frankfurt, July 1981.

"The Current State of American Indian Studies in the U.S. in the Fields of History and Anthropology." University of Basel, August 1986.

"Albert Gallatin: A Swiss Contribution to American Ethnology." University of Basel, December 1984.

"The Lewis and Clark Expedition: Jeffersonian Science Beyond the Frontier." Instituto de Estudios Norteamericanos, Barcelona, December 1984.

"American Indians and American Society: Some Causes for Concern." University of Paris-Nanterre, March 1981. Also given at the University of Odense, November 1980; the University of Kassel, November 1980; University of Nottingham, March 1981; University of East Anglia, March 1981; and in Dubrovnik, October 1980.

"Henry Rowe Schoolcraft: Early Government Anthropologist," Anthropological Society of Washington, Washington, D.C., October 1975.

BOOK REVIEWS

Numerous reviews in history and anthropology journals including: *American Historical Review*, *Journal of American History*, *Ethnohistory*, *Journal of the History of the Behavioral Sciences*, and *The Western Historical Quarterly*.

MAJOR GRANTS, AWARDS, FELLOWSHIPS

Indiana University Faculty Research and Development Grant, 1987
National Endowment for the Humanities Travel Grant, 1985-86
American Philosophical Society Grant, 1984-1985, 1971-72
Newberry Library Postdoctoral Fellowship, 1975-1976

MOST RECENT TEACHING APPOINTMENTS

Freie Universität Berlin, 1988-1989
Senior Fulbright Lecturer in History

Indiana University
Associate Professor in History Indiana University-Malaysian Program, 1987
Visiting Associate Professor History, 1985-
Visiting Assistant Professor History, Summer 1983, 1985
Visiting Assistant Professor Anthropology, Summer 1982

Universität Mainz, 1980-1981
Senior Fulbright Lecturer in Ethnology and American Studies

University of Illinois, Chicago, 1977-1980
Assistant Professor of Native American Studies

ADMINISTRATIVE POSITIONS

The Newberry Library, 1973-75
Associate Director of the Center for the History of the American Indian, 1974-75.
Assistant Director of the Center for the History of the American Indian, 1973-74.

PROFESSIONAL ACTIVITIES

ELECTED NATIONAL OFFICE

Executive Council, American Society for Ethnohistory, 1984-86

MEETINGS

Chair of session American Historical Association convention (1974)
Co-Chair of session Social Science History Association convention (1976)

Served as commentator
Organization of American Historians convention (1976)
American Society for Ethnohistory convention (1984,1985,1986)

EDITORIAL EXPERIENCE

Book Review Editor
American Historical Review, 1983-84

Co-founder and Member of the Board of Editors
History of Anthropology Newsletter, 1973-present

Member of Board of Editors:

American Indian Culture and Research Journal, 1974-present

American Indian Quarterly: A Journal of Anthropology, History and Literature, 1974-1976.

Editor:

Meeting Ground: Newsletter for the Center for the History of the American Indian Vol. II (Fall 1974 and Spring 1975).

American Indian Bibliography Series, Center for the History of the American Indian, 1975.

CONSULTANT

Historical Consultant for The Newberry Library's exhibition "German Science and the American West," 1988.

Research Historian and Expert Witness for the Departments of Justice and Interior and the Sault Ste. Marie Ojibwas in "The City of Sault Ste. Marie v. Andrus," 1979-1983.

Unpublished report: "City of Sault Ste. Marie vs Cecil Andrus," May 1980, 1-78

Historial Consultant for the Native American Rights Fund on American Indian bone repatriation case, 1989-1990.

Unpublished report: "A Brief Historical Survey of the Expropriation of American Indian Remains," March 1990, i-iv, 1-73.

Emery A. Johnson, MD, MPH

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May 8, 1990

Mr. Gary Kimble, Executive Director
Association on American Indian Affairs
95 Madison Avenue
New York, NY 10016

Subject: Relevance of Museum Collections of Native American Human Remains to the Health of Native Americans

I believe that most Americans would agree that respect for human rights is the paramount principle to be considered in resolving the issue of the disposition of Native American human remains now included in museum collections. However, since there has been concern expressed that the repatriation of Native American human remains will result in the loss of an important research resource necessary for advancing human health, it is necessary to review the record.

As to the issue of the value of research on skeletal remains to the present medical care of American Indian and Alaska Native people, I can only say that I am not aware of any current medical diagnostic or treatment procedure that has been derived from research on such skeletal remains. Nor am I aware of any during the thirty five years that I have been involved in American Indian/Alaska Native health care.

In discussing this issue with other physicians who now hold or have held senior positions in the Indian Health Service, we can all identify contributions made in the past to the understanding of the natural history of disease and can speculate on possible value, such as in establishing baselines for environmental pollution, but did not identify any current research activity that promises to assist in elevating the health status of American Indian and Alaska Native people.

A search this past week of the medical literature collected by the National Library of Medicine, which contains essentially all of the significant scientific medical journals, did not reveal any significant publication relating to the utilization of Native American skeletal remains to prevention, diagnosis or treatment of disease. While there are theoretical potentials, the evidence does not suggest that there has been any significant research in recent years that will impact on the health of humans. If there had been such research, it would be found in the collected literature in the National Library of Medicine.

The only citation in the last few years that initially suggested any potential relevance was an article in the German literature ("Trace Elements in Buried Human Bones and Their Value", Anthropologischer Anzeiger 1987 (March 45(1) 9-17). The values cited included "clues to the diets of ancient populations --- estimating weaning age and the length of the active reproductive time span in human females". While these contributions to "paleodemography and paleoecology" may be of some interest, they do not seem to me to make any real contribution to advancing the health status of the Native American people.

Further, if important and legitimate research potential of human skeletal remains in museum collections could be identified, the possibility of appropriate research still remains by obtaining the informed consent of the descendants or tribal authorities. When we established the policy that the Indian Health Service would not participate in any research that had not been formally approved by the tribal governments, concern was expressed by researchers that important research efforts would be foreclosed. That concern was unfounded. What did occur was that researchers were forced to design their research protocols to be more sensitive to cultural and human rights concerns and to present their proposals to the Native American community involved for approval. Important medical research continues to be carried out in Indian communities -- but with the informed consent of the tribal governments and of the individuals involved.

As a final comment, I cannot believe that the theoretical potential of medical research on Native American human remains in museum collections can outweigh the current negative impact on Indian mental health that the present condition of disrespect for human rights has on today's Native American people. Therefore, I fully support the position of the Association on American Indian Affairs on this issue.

Sincerely,

Emery A. Johnson, MD, MPH
Assistant Surgeon General, Retired
United States Public Health Service

ARIZONA ARCHAEOLOGICAL COUNCIL

May 22, 1990

Honorable John McCain
United States Senate
Washington, D.C. 20510

RE: S. 1980, Native American Repatriation of Cultural Patrimony Act

Dear Senator McCain:

I am writing to express concern on behalf of the Arizona Archaeological Council, an organization of professional and avocational archaeologist, about the current language of the above proposed bill, especially regarding Section 4, Excavations. I believe S. 1980 is well intended, and reflects the interests of many Native Americans, but it needs balance from other interests.

As the bill is currently drafted, any Native American individual or group could assert an interest in any human remains, sacred objects, or funerary objects which have been excavated pursuant to the National Historic Preservation Act (NHPA) and could request immediate repatriation of those remains. As currently drafted, Section 4 of S. 1980 could force any Federal agency conducting their responsibilities under NHPA, under which most archaeology is done, to violate those responsibilities and leave themselves vunerable to a lawsuit for being out of compliance with Section 106 of NHPA, the Secretary of the Interior's Standards for conducting archaeological research (36 CFR Part 66), and the Archaeological Resources Protection Act. It is essential to maintain the integrity of current federal legislation protecting cultural resources.

Section 4 needs provisions to allow time for the scientific analysis of human remains and objects for their information value. It should also include provisions for negotiation with Native Americans for curation of those remains on a case-by-case basis. As currently drafted, this section could significantly deter archaeological research in the United States, which is not in the best public interest.

Section 4(b)(2) of S. 1980 could allow any Native American to halt federally funded or assisted construction in an area containing human remains, sacred objects and funerary objects during construction. If applied in an arbitrary manner, such action could cause enormous financial hardship, legal liability, and not be in the best interest of the general public, especially if such construction was badly needed. Please ensure that federally assisted construction and archaeology cannot be stopped by the whim of an individual or by a group that might be against a Federal project for other reasons.

I have concerns with other sections of S. 1980 as well. For instance, the term "burial site" in Section 2(7) could be misinterpreted to include an entire archaeological site that contains a burial or burials. I do not believe this is the intent of the proposed legislation and recommend that "burial site" should refer to the immediate vicinity of the burial. Section 3(2)(A) is ambigious , especially in reference to "or other site." I recommend that "or other site" be deleted from Section 3(2)(A).

Passage of this proposed bill could have devastating impacts on museums. If passed, it is critical to consider Federal funding to construct new repositories on Indian land that can house and protect non-human items that are repatriated.

I have met with representatives of many tribes in Arizona and have a fairly good idea of where most Native American groups in Arizona stand as far as reburial and repatriation are concerned. In my opinion, there is almost unanimous support for reburial of human remains--this is inevitable. However, many of these same groups do not object to scientific analysis of human remains prior to reburial. Please make this an option. In addition, individuals within Native American groups have mixed feelings about reburial of all funerary objects; many realize that it is important to keep these objects available for posterity and interpretating their cultural heritage. Some of these items are a part of a world patrimony and are also important to non-Indians for a better understanding of American history.

It is obvious that you have paid careful attention to Native American concerns in supporting this bill. I hope that you will also evaluate the concerns of archaeologists, museums, Federal agencies, and the public who may need overdue construction. Your consideration of the points raised above is very much appreciated. If you have any questions, please contact me.

Sincerely,

Robert E. Gasser
President

2662 South Elm
Tempe, AZ 85282

(602) 967-6860

DATE: May 14, 1990

TO: Senate Select Committee on Indian Affairs

FROM:
Lynne Goldstein
Department of Anthropology
University of Wisconsin-Milwaukee
Milwaukee, WI 53201

Michael Moratto
INFOTEC Research, Inc.
423 W. Fallbrook Ave., Suite 204
Fresno, CA 93711

RE: **Senate Bill 1980 and the Panel for a National Dialogue on Museum/Native American Relations**

We request that this letter and the attached statement be made part of the Hearing record for S.1980. We are unable to attend the Committee's Hearing, but appreciate this opportunity to state our general support for the draft substitute for S.1980 and to express a few of our concerns.

In the recent revision of S.1980, we note that several statements, phrases, and conclusions from the *Report of the Panel for a National Dialogue on Museum/Native American Relations* have been added as part of the Bill. As participants in this Dialogue, we are concerned that these items —particularly those concerning unaffiliated human remains—have been added without fully understanding the context of the Panel's deliberations.

The minority members of the Panel prepared a statement that was not included in the Panel's REPORT, and we ask that the Senate Select Committee consider this statement (attached) in their deliberations on S.1980.

In our opinion, although the Panel's majority indicated their desire to request reburial of unaffiliated remains, we do not believe that this issue was adequately examined and considered. We note that the three dissenting members of the Panel on this portion of the National Dialogue report were the only members with extensive experience in working with human remains and the problems of affiliation.

There are many portions of S.1980 that are important and will go a long way toward resolving past injustices; the issue of unaffiliated remains needs additional consideration and discussion. We respectfully ask that the portions of S.1980 that include references to unaffiliated remains be removed from the Bill.

Thank you for your consideration.

THE PANEL FOR A NATIONAL DIALOGUE ON MUSEUM/NATIVE AMERICAN RELATIONS: A MINORITY VIEW

In the *Report of the Panel for a National Dialogue on Museum/Native American Relations*, we are cited in a number of footnotes as disagreeing with the majority of the Panel. We present this statement in order to clarify our position and some of the statements made in the *Report*.

We entered the Dialogue with the hopes that rational discussion and negotiation might lead to consensus on a series of issues of concern to Native Americans, the museum and anthropological communities, and the general public. We were fully prepared to compromise on some issues, while anticipating that on other issues there would be fundamental disagreement. The meetings themselves were significant, and a number of important issues were discussed at length. We have the greatest respect for the members of the Panel, and we learned much from our participation. Unfortunately, while we applaud the concept of the dialogue, we cannot say the same for the process that resulted in the Panel's *Reportt*. That process was pressured and hurried, and decisions were made without discussion by or input from all Panel members. We fear that this haste might result in unwanted and unforeseen consequences for the Panel's intentions. Also, we regret that the Panel failed to explore possible solutions that would meet American Indian concerns yet prevent destruction of unique and scientifically valuable museum collections.

The entire Panel met a total of four times during 1989, and a variety of topics were discussed. *It is important to understand, however, that at no time did the full Panel vote on any issue or formally agree to take a particular position.* In our opinion, there was clear consensus on two major issues: 1) museums should act in good faith in response to Indian requests for repatriation, and 2) museums should make every effort to respond positively to a repatriation request when there is a clear cultural link to the group making the request. These issues are important and major points, and indeed the bulk of the *Report* reflects this consensus.

We could provide a detailed discussion of our views on each item of disagreement, but this would provide the reader with little more than a detailed sense of frustration. Instead, we would like to explain the basis for all of our disagreements with the *Report*. The *Report's* recommendations come from the perspective of a presumption of dominance, and we would instead argue that the objective is equality.

There is no question about the nature of treatment of Native Americans in the United States. The record is abysmal and we must do all we can to rectify that treatment. Museums have operated from a position of dominance where even a question from a Native American could be ignored without fear of consequences. One's initial reaction might be to reverse this situation of museum dominance by putting Indians into the position of power and dominance. As much as that might appeal to some people's desires for retribution, we think that it is ultimately a poor decision. Reversing the relationship does not remedy it; it only perpetuates the fundamental inequality.

Our "footnotes" in the Panel's *Report* reflect our attempts to argue for equality. Making Native Americans the dominant power might make people feel better initially, but will do nothing in the long-run for the heritage of the country or for Native Americans. By arguing for equality, we are suggesting major changes for museums and other institutions with collections; they will have to incorporate the American Indian perspective and treat Native American claims equitably. This process will not be easy, but will benefit all for the future.

While we agree that there are cases in which such claims may be seen as human rights issues, we do not agree that such a determination mandates in all cases following the wishes of a nation or group (once again, the problem of dominance). We would point out that the final two paragraphs of the *Report* best represent the actual process that must be followed:

> Wherever possible, the disposition and treatment of skeletal remains and other materials should be determined consensually through cooperative and timely discussions between the institution involved and all interested Native American groups. Where issues remain after such good faith discussions, an attempt should be made to settle these issues through mutually agreed upon processes of mediation or arbitration.
>
> If unresolved issues remain, applicable legal standards should be judicially enforceable. It is important that the process for enforcing these standards be equally accessible to all tribes and museums, regardless of their wealth or resources.

We thought that the *Report* should clearly state and focus upon those issues on which there was consensus; the *Report*'s suggestions for "good practice" are ones that we urge all museum professionals to implement. We must achieve equal consideration for all parties. Unfortunately, we think that this critical issue has been overshadowed by some portions of the *Report* that will only ensure that the process of negotiating repatriation requests will be neither open nor fair.

Lynne Goldstein
University of Wisconsin-Milwaukee

Michael Moratto
INFOTEC Research, Incorporated

Douglas H. Ubelaker
Smithsonian Institution

THE MORNING STAR FOUNDATION
"For the advocacy of Native people's traditional and cultural rights"

STATEMENT OF SUZAN SHOWN HARJO, PRESIDENT AND EXECUTIVE DIRECTOR OF THE MORNING STAR FOUNDATION, ON THE NATIVE AMERICAN GRAVE PROTECTION AND REPATRIATION ACT, S. 1980, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, IN THE HEARING OF MAY 14, 1990, WASHINGTON, D.C.

Chairman Inouye, Vice Chairman McCain and Members of the Committee, it is with deep respect and great appreciation that I greet you and commend your sincere efforts to work with the Indian people to make a better world for our coming generations and to bring honor to the United States in its dealings with Native nations.

Thank you for inviting The Morning Star Foundation to testify on the Native American Grave Protection and Repatriation Act, S. 1980, the spirit and intent of which we endorse wholeheartedly. I have served as President of Morning Star since its inception in the mid-1980s as an advocate for the traditional and cultural rights of Native peoples. In 1986, the Foundation became a non-profit, tax-exempt organization under 501 (C) (3) of the Internal Revenue Code and has provided support to the cultural, educational and communications programs of the Wa-He-Lute Indian School, WOJB Radio Station and the National Congress of American Indians. From 1984 until late 1989, I served as Executive Director of the later organization and initiated its Cultural Concerns Commission.

I am Cheyenne and Creek and a citizen of the Cheyenne and Arapaho Tribes of Oklahoma. My involvement in issues related to S. 1980 has been lifelong and paramount, personally and professionally. Since the 1960s, I have worked with Native people hemisphere-wide to defend and advance our cultural and traditional rights, and was an organizer of the World Council of Indigenous Peoples in the mid-1970s and author of its founding statement on cultural and religious rights. In 1978 and 1979 as Special Assistant for Indian Liaison and Legislation in the Office of the Secretary of the Interior, I was coordinator and principle author of the President's Report on American Indian Religious Freedom, the 50-agency review and implementation mandated by the American Indian Religious Freedom Act of 1978. Since 1983, I have served as a Trustee of the Museum of the American Indian, Heye Foundation, in New York, and am a Board Member of the National Museum of the American Indian and a Member of the Cultural Education Committee and NMAI Director Search Committee of the Smithsonian Institution. With regard to the law establishing the new Museum, I was the principle Indian negotiator of the section on repatriation of Native human remains and cultural patrimony from the Smithsonian to Native peoples. Other recent expertise with issues and processes leading up to the legislation before you includes the year-long National Dialogue on Museums/Native American Relations, the Indian participation for which I was privileged to select and join. The recommendations of the Dialogue Report, presented by the Chairman and Vice Chairman of this Committee in this hearing room on February 28, 1990, are embodied in your legislation in a balanced manner and address the concerns of widely divergent interests.

The significance of this legislation is that it is an honest, practical effort to do what can be done through modern legal mechanisms to bring the United States and its citizenry out of the shadows of a shameful past where good people let bad people commit atrocious actions against our people. Graverobbing, burial site desecration, sacrilege of our sacred sites and objects, theft of our items of Native national patrimony, use of our dead relatives as commodities of trade and commerce, exhibition of our dead relatives' skulls and destruction of their remains in federal and private places of learning and education, classification of Native people as federal property and other related practices are part of that shameful past and all continue today. These heinous acts are burned into the hearts and minds of Native people and, together with the wholesale slaughters past and slower, more subtle methods of killing our people today, have left us in states of prolonged mourning as nations and as individuals. This legislation will not correct all our problems, but it is more than a beginning, and its implementation will go far toward educating by example and practice a U.S. population which still in great part views Native people in the past tense and allows official actions, which mirror many private and business actions, to dehumanize us today.

Much damage has been done, and is being done, to Native people as a result of the widespread, non-Native view that standards of common decency do not apply to our people and that the rules somehow change and ordinary protections do not apply to us. When the Soviet government sent Lithuania a bill for the cost of occupation and initiated its blockcade of sustaining resources, the world understood the injustice and expressed outrage. When most Indian nations were billed, and are being billed, for the costs of colonization, called judgment funds off-sets by the federal government, very few eyebrows are raised. Both the "off-setting" and the modern starve-or-sell, cash-and-poverty practices in Indian country continue today and should raise hackles broadly. It is only a few in Congress who are attempting to deal with these problems in a way which will not result in new ones, and those Members of this Committee who are doing so must be commended.

During our National Dialogue on Museums/Native American Relations process, the Indian participants absolutely insisted on application of internationally understood human rights principles to be applied to, and to stand as the context for, the repatriation of our dead relatives. While all participants agreed verbally in the tape-recorded sessions, we Indian participants were saddened, but not surprised, that three of the non-Indian scientists subsequently went back on their words and disassociated themselves by name from even this most fundamental point of application of human rights standards. This is its own best example of the thinking that the rules change when Native people are involved, and provides an indication of the value placed on our people and important religious items. One of the three people who so disassociated himself from the human rights point works at the Smithsonian Institution, another has been named to the Institution's panel to oversee the repatriation process and all three withdrew from the point because of their stated obligations to the leading associations for their archaeology, physical anthropology and museum professions. This experience left no doubt in my mind that these professions would change in the direction of a just ethical standard on their own. Legislation is needed in this area as sorely as it was needed to bring about change in American civil rights, and Congress did not permit the grand wizardry groups to write the laws or to oversee their implementation.

While the legislation as presently drafted contains certain language, definition and consistency problems, regarding which I will work with the Committee prior to the June mark-up session, the overall thrust and points are solid and should not be further watered down as many of the traders, dealers and scientists in our world would like. This legislation goes to the root cause of and incentive for the problem here - common greed - which must be stopped at the marketplace. Even though 18 USC 1163 already makes it illegal to be in possession of stolen Indian property, this has not solved the problem and has apparently not served as much of a deterrent. Only Congress can prevent the wholesale transportation of our property across state and international lines. The United States should seek accords with other countries toward this end, just as the governments of Peru, among others, have done and are doing. While the specified penalties and confinement terms seem inadequate, given the meaning and injury related to the offense to Native people, and given the pricey nature of our property on the open market and in the blackmarket, they are a starting point and could be reviewed after some experience is gained under the new law.

The section establishing the Review Committee should be rethought, in light of the recent interpretation of and appointments under the repatriation panel section of the new Museum law. At the very least, the composition of the Committee should be specified as to categories of expertise, such as Native customary and traditional law, federal Indian law and Native history. The Native panelists should be nominated by Native religious and governmental leaders.

The section requiring inventories and reports is essential, not only to the purpose of the legislation, but to good museum practice as well. All federal agencies, educational institutions and museums housing our property should have done this already and, if they have not done so, must now make up for their generations of neglect. The museums will make a case for an extraordinary amount of appropriations for their failure or inability to have undertaken this task to date, but this legislation should not be converted to the National Museums Relief Act to the point that its goal would be defeated because of the price-tag. Appropriations should not be limited to the Interior Department, as there are other federal agencies involved which should have similar authorities under the legislation, and as an appropriation to a single agency to resolve a government-wide problem could result in insufficient funding to carry out the purposes of the act and could give the impression that this is something other than a shared responsibility of myriad federal agencies.

I look forward to working with the Committee on this much needed and greatly appreciated legislation. As always, Native people with extertise in this field are willing to engage in serious discussion with all interested parties on serious points of concern, as our histories demonstrate, and I would be a willing participant in such talks as the Committee deems potentially constructive. However, if such discussions are to be productive, it must be clear at the outset that we are beyond the rhetoric stage and talk about whether or not such legislation is needed, and that we are down to the detail stage about how the new law will work.

Again, thank you for your sincere efforts on our behalf in this most important part of Native people's lives.

Aho.

THE NAVAJO NATION

Leonard Haskie
Interim President
Navajo Nation

Irving Billy
Interim Vice-President
Navajo Nation

TESTIMONY OF THE NAVAJO NATION
on

"Native American Grave Protection and Repatriation Act"
S.1980 (Substitute)

before

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Introduction

By direction of the Office of the Interim President of the Navajo Nation, the Navajo Nation Historic Preservation Department is pleased to offer testimony on "Native American Grave Protection and Repatriation Act" (S.1980). The Navajo Nation welcomes this opportunity to comment on the subject legislation and hopes that these remarks are helpful in improving this bill and moving forward to its enactment and the resolution of this controversial and sensitive issue.

The Navajo Nation is located in the Four Corners Region of the southwestern United States. The Navajo Reservation is the largest reservation in the United States. There are over 190,000 members of the Navajo Nation, making it the largest tribe in the United States. Like all Native Americans, Navajos are concerned about the treatment the remains of their ancestors have received in the past.

While the Navajo Nation acknowledges that human remains and grave associated artifacts and funerary objects have been and can be unique sources of scientific and humanistic information, the Navajo Nation finds the treatment of human remains as purely objects of scientific study is abhorrent. The exhumation of human remains should be permitted only when disturbance of those remains can not be avoided and when treatment in place is not

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possible. When human remains and associated objects must be disinterred they should be immediately analyzed and reinterred upon completion of the analysis. Any other treatment reflects an absence of respect for the dignity of all human beings. In the words attributed to Francois Mitterand by the Washington Post, on the day of the hearings on this bill, "Respect for the living demands respect for the dead."

THE NAVAJO NATION SUPPORTS THE INTENT OF THIS LEGISLATION

The Navajo Nation fully supports the intent of this legislation and commends Senator McCain for introducing it, and Chairman Inouye and the rest of this Committee for the concern shown for this issue by holding hearings on the bill.

THE NAVAJO NATION DOES NOT ENDORSE S.1980

Regrettably, the Navajo Nation can not endorse this bill in its present form. The Navajo Nation is forced to adopt this position because it finds the bill to be vague and confusing in its particulars and to be seriously flawed in its attempts to resolve this important issue. Specific comments are detailed below pertaining to the specifically problematic sections of the bill. While, the Navajo Nation offers many specific criticisms, the Navajo Nation reaffirms its support for Senator McCain's efforts to resolve this issue and will provide whatever assistance it can to help achieve its important goals.

SPECIFIC COMMENTS

Section 2 (6) states that it is necessary to clarify rightful "ownership and control" over human remains and related objects. The Navajo Nation agrees with the issue raised by this section but believes that at some point the bill must acknowledge the common law principle that there is no property right in human remains.

In addition, the Navajo Nation is concerned about the linkage created in this section (and which crops up throughout the bill) between "federal lands" and "tribal lands." Remains found on tribal lands must continue to be under the control of the appropriate tribal government even after the passage of this bill. Nothing in the present bill should imply that it preempts tribal control of remains found on tribal land.

Sec. 3. (2) does "member" as used in this definition mean "enrolled member" of a tribe?

Sec. 9. While the definition probably does not need to be changed, report language on the bill should probably state that finding human remains, with or without associated objects implies a "prepared physical location" whether or not any evidence of preparation still exists.

Sec. 3. (15) This definition of federal land perpetuates the confusion of federal and tribal lands. By any reasonable definition the federal government must be seen as controlling all tribal trust lands. Tribal governments must retain control of human remains located on their lands.

Sec. 4(b) is unclear. Subparagraphs (1)-(5) purport to delineate ownership, but as drafted it is unclear if there is any internal priority inherent in this list. For example, does location on a reservation preempt consideration of the other factors? Or are these factors to be considered together to arrive at a decision. The Navajo Nation would strenuously object to any wording or interpretation that diminishes the Navajo Nation's authority to determine the treatment of human remains found on Navajo lands. In any case, the Navajo Nation believes that this section needs clarification.

Sec. 4(c)(2) transfers authority on decisions regarding human remains from the "owners" as defined earlier in the bill to the cultural affiliates. This provision represents a substantial derogation of tribal sovereignty if it applies to reservation lands. Again, the Navajo Nation would strenuously oppose any provision that would diminish the Nation's sovereign authority to control the treatment and disposition of human remains and related objects located on Navajo lands.
Furthermore, the bill must recognize that there are some projects that must be authorized even though disturbance of human remains may be unavoidable. Sometimes such disturbance is unavoidable if undertakings that are otherwise in the public interest are to be allowed to proceed. The bill should not give a "Native American group" the power to veto an undertaking because of the presence of related human remains. Recognizing that sometimes it will be necessary to remove such remains if projects that are genuinely in the public interest are to proceed, the bill must provide mechanisms for dealing with such eventualities.

The bill should establish a consultation process involving concerned Native American groups in the decision making process regarding disinterment, treatment and final disposition of the remains. The Navajo Nation holds that the basis for such consultations must be the principles that if remains must be exhumed such actions must be undertaken with due respect for both the living and the dead, analysis should be conducted and limited to activities that will yield demonstrably important scientific and/or humanistic information, analysis must be non-invasive and non-destructive unless such approaches are completely justified and acceptable to the concerned Native American group, and final disposition must be in accordance with the wishes of the concerned Native American group. Such consultations could be conducted under the oversight of the Advisory Council on Historic Preservation through the normal Section 106 process or under a similar procedure overseen by the review committee established in Sec. 6 of this bill.

Sec. 6. The creation of an oversight committee is essential. The Navajo Nation does have several questions regarding this, however. The issues raised here by the Navajo Nation derive from the fact that the Secretary of the Interior holds substantial collections of materials covered by this bill. Accordingly, the Navajo Nation wonders whether, in order to avoid a potential conflict of interest or the appearance of a conflict of interest, the committee should be charged with writing implementing regulations rather than the Secretary of the Interior.

Likewise, because this bill provides mechanism for divesting the federal government of these collections and the Secretary of the Interior is charged with managing substantial collections that contain materials covered by this bill, the Navajo Nation wonders whether the committee will be faced with inherent conflicts arising from the fact that it is administratively placed within the Department of the Interior. Furthermore, the apparent inherent conflict is heightened by the fact that the committee will be appointed by the Secretary of the Interior. The committee will thus be seen to be a creature of the Secretary and the Department, whatever the reality of its independence in action.

Finally, the Navajo Nation believes that the absence of any authorization for appropriation, established appropriation levels or authority for an agency to seek funding is a serious oversight. Without funding none of the activities proposed by the bill can be carried out. Specific appropriations authority and levels must be provided in the bill.

CONCLUDING STATEMENT

The Navajo Nation is pleased to see efforts to resolve the issues surrounding treatment of human remains and associated objects advance to the point of introduction of legislation and holding of hearings. The Navajo Nation fully and strongly supports the intent of S.1980. However, the Navajo Nation regards the actual bill as substantially flawed by a lack of clarity. Furthermore, there are substantive and technical matters that must be resolved before the Navajo Nation can support this particular piece of legislation.

The Navajo Nation commends Senator McCain and the Committee on this effort and stands ready to provide whatever assistance possible in order to advance this bill. If the Navajo Nation can be of further assistance or if the Committee desires further discussion of any of the points raised here, please contact Dr. Alan Downer, Navajo Nation Historic Preservation Officer, at (602) 871-6437 or P.O. Box 2898, Window Rock, Arizona 86515.

Testimony of Norbert S. Hill, Jr.

Good afternoon Mr. Chairman and members of the Committee, I am Norbert S. Hill, Jr., executive director of the American Indian Science and Engineering Society (AISES). AISES is a private, nonprofit organization which seeks to significantly increase the number of American Indian scientists and engineers in the nation and to develop technologically informed leaders within the Indian community. The ultimate goal of AISES is to be a catalyst for the advancement of American Indians as they seek to become self-reliant and self-determined members of society. Our challenge is to reconcile western science with American Indian tradition and culture. Therefore, I appreciate the opportunity for AISES to participate as a witness in this important hearing. I am pleased to offer testimony on behalf of AISES on the Native American Repatriation of Cultural Patrimony Act (S. 1980), the Native American Grave and Burial Protection Act (S. 1021), and the draft proposed substitute bill, which I understand will be the focus of this hearing. AISES is in support of this proposed bill which is morally correct legislation.

My testimony will focus on the ethics of science. (Attached to my testimony, I have appended the AISES position paper which was adopted unanimously by our American Indian board of trustees.) The people must come first. They must come before the science, before the museum, and before the anthropologists and archaeologists. Dr. Russell Thorton's book, "The American Indian Holocaust" documents that in 1492 there were between five and six million American Indians living in the 48 contiguous states. In 1890, 100 years ago, there were only 195,000 survivors. This American Indian holocaust has never been reconciled by the U.S. government. Recently, the East Germans apologized to the Jewish people for their behavior in World War II. As Americans approach the 500-Year anniversary of Indians discovering Columbus, Indian people of America have not received any sort of apology for the destruction of our societies and the desecration of our graves. This bill is a part of the reconciliation necessary to heal the wounds of Indian people.

THE PEOPLE COME FIRST...and...**WE THE PEOPLE**, the original inhabitants of this great land, are asking for nothing more than legal and religious sovereignty in the treatment and determination of our ancestor's remains and grave offerings. No longer can our ancestors be called specimens, pathological materials, data and archaeological resources. The time is NOW to rectify the profound injustices of the past century that have taken place in this country in the treatment of Indian graves, human remains, and funerary offerings. They have often times been handled in a manner inconsistent with the treatment accorded to other burials in the United States, and it is wrong for the remains of Indian ancestors and funerary objects to be displayed publicly, or closeted for undefined research. Respect for the dead is paramount in our culture, as it is in all cultures.

As a national organization which supports Indian involvement in the sciences, the American Indian Science and Engineering

Society (AISES) feels that it is important to register our views concerning the scientific investigation of Indian skeletal remains, mortuary offerings and grave sites. The reburial and repatriation issues are simple questions of humanity and morality, of reconciling Western scientific ideology and Indian spirituality, and of religious freedom. Based on this, AISES feels that the dead of all races and nations are entitled to protection from arbitrary disturbances and treatment which is offensive to the rights and sensibilities of living communities. All graves and cemeteries should be regarded with a strong presumption of inviolability. Scientific investigation of the dead should be conditional upon submission to the wishes of the living community under study, or the heirs and descendants of that community. As stated by Mr. Adams, Secretary of the Smithsonian, "It's up to descendants to determine where remains go" (1990:16).

It has been argued by many museums, scholars, and state and federal agencies that the retention of the human remains of American Indians is essential to the progress of science and is of great benefit in educating the American people about Indians (Deloria 1989:5). Historically in this country, it has been demonstrated that science and religion have been used as a means to dehumanize the "minority" populations. When the Spanish first arrived in this land, it was maintained that the human species was naturally divided into two kinds of men: (1) the civilized man who was believed to have intelligence, sentiments, emotions, beliefs and values, and (2) the brute or barbarian who lacked these essential qualities and who, by his very nature, would find it difficult, if not impossible to acquire them (Deloria 1989:3). In the course of the last five centuries, the so-called "scientific" community set out to demonstrate that Indians were savages through vicious and vile methods. In the 1860s, field surgeons, at the request of the Surgeon General, were urged to collect Indian heads for the purpose of assisting in "the progress of anthropological science." This was carried out over the next several decades in which thousands of heads were obtained from burials and battlefields (Lamb 1917). In the 1930s, one of the worst Smithsonian-sanctioned grave robbings took place in a native Alaskan village on Kodiak Island. The skeletons of more than 800 Koniag people were excavated from a cemetery that was still in use at the time, and these remains are still housed at the Smithsonian (Butterfield 1989:80).

Whatever arguments might be made for potential benefits of research to Indian Tribes, scientists must acknowledge the actual -- not potential or theoretical -- harm which proceeds from circumstances of clandestine expropriation of the dead, confiscation of funerary offerings, and the conduct of scientific studies without tribal knowledge or consent. Under such conditions, scientific investigation can hardly be termed "objective" or "ethical" -- no matter what "benefits" might materialize. Thus, when it comes to science versus moral and ethical issues, there is only one path to follow. As Marcia

Angell, the executive editor to The New England Journal of Medicine, recently observed, "The importance of results from scientific research has no place in judging ethics" (1989:A39). It seems relevant to note that this statement was made in the context of evaluating the ethics of utilizing Nazi scientific data. The scientific excesses of Nazi Germany should serve as a reminder of what can happen when a society permits the purposes of science to overrule community consent, religious and human rights, and public sensibilities. As one survivor of experiments conducted by Dr. Mengele recently put it, "Science cannot become the master of the man" (Sholiton 1989:15).

AISES disagrees with reasoning which serves to elevate scientific curiosity above human rights, and which is designed to undermine the authority of Indian governments to protect the disposition and treatment of Indian human remains and grave offerings. We also recognize that the treatment of the dead by American academic institutions affects Indian communities throughout the United States. It is a sad thing that at many universities throughout this country, students have a considerably better chance of learning about Native Americans from skeletal remains, than from Indian professors. It is a fact that the remains of Indian dead on many campuses outnumber the living and breathing Native American students.

Stanford University houses 550 human remains; Yale, Harvard, and the University of Oklahoma each reported close to 500; Arizona State and the University Colorado have approximately 350

(El-Najjar 1977); and the University of Missouri curates some 1500 Indian remains, which the Director of the Museum of Anthropology defined in 1989 as, "a non-renewable resource essential to research" declaring that he had "no intention of letting them go" (Schofield 1989:31A).

It is difficult for some anthropologists to come to grips with the moral aspect of the repatriation issue. Nevertheless, the American Anthropological Association (AAA) code of ethics require anthropologists to place the best interests of the people studied above their own professional ambitions. For example, the AAA code of ethics states:

> "In research, an anthropologist's paramount responsibility is to those he studies. When there is a conflict of interest, these individuals must come first."

In no other area has this ethic become so important as it has in the repatriation issue. It is, therefore, regrettable that some anthropologists, who have long benefitted from Indian people, are acting to oppose the return of these dead for reburial.

The historic emphasis of American universities on building and maintaining collections of Indian skeletal remains must shift to the recruiting of living Indian students. The mission of AISES would be materially served if more Indians were brought into academic science studies as students rather than as specimens, as well as the development of relations based on mutual respect between Indians and science communities.

It is strongly urged that these very significant bills be passed to demonstrate that equality to all races exists in the United States, and that we, as a nation, will be entering the twenty-first century with respect, honesty and integrity as fundamental truths.

The heart of the Indian people lives on in the spirit of the past, a past that wells up within our hearts and reminds us of a heritage when our ancestors lived in tribes and were close to the Earth. As related by Chief Joseph of the Nez Perces in the hour of his father's death in 1871:

> "...my son never sell the bones of your father. When I am gone, think of your country. Your are the chief of these people. They look to you to guide them. Always remember that your father never sold his country. You must stop your ears whenever you are asked to sign a treaty selling your home. A few years more, and white men will be all around you. They have their eyes on this land. My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother." I told him I would protect his grave and he smiled and passed away to the spirit-land.... A man who would not love his father's grave is worse than a wild animal (McLuhan 1971:29).

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Position Paper of the

American Indian Science & Engineering Society

The Repatriation of Indian Skeletal Remains and Grave Offerings

The American Indian Science and Engineering Society (AISES) was founded in 1977 as a private nonprofit organization which seeks to significantly increase the number of Indian scientists and engineers in the United States, and to contribute toward the development of technologically informed leaders within Indian communities. The ultimate goal of our organization is to serve as a catalyst for the advancement of American Indians as they seek to become self-reliant and self-determined members of society.

As a national organization which supports Indian involvement in the sciences, we feel that it is important to register our views concerning the scientific investigation of Indian skeletal remains, mortuary offerings and grave sites. AISES feels that the dead of all races and nations are entitled to protection from arbitrary disturbance and treatment which is offensive to the rights and sensibilities of living communities. All graves and cemeteries should be regarded with a strong presumption of inviolability. Scientific investigation of the dead should be conditional upon submission to the wishes of the human community under study, or the heirs and descendants of that community.

Indian graves, human remains, and funerary offerings are often treated in a manner which is inconsistent with treatment accorded to other burials in the United States. During the 1860s, the Surgeon General requested field surgeons to collect Indian heads for the purpose of assisting "the progress of anthropological science;" and army doctors responded over the next several decades by sending in thousands of heads obtained from the battlefields and burials (Daniel Smith Lamb, "The Army Medical Museum in American Anthropology," Proceedings of the Nineteenth International Congress of Americanists, Washington, December, 1915, 1917). The Antiquities Act of 1906 and the Archeological Resources Protection Act of 1979 both define Indian human remains as "resources;" but the dead of no other ethnic group receive similar definition. Some agencies have used these statutes to allege the establishment of federal ownership interests in Indian bodies located on public lands -- asserting, in effect, that Indians have been singled out for special treatment designed to alienate them from control over their cemeteries and the remains and offerings of their ancestors. Under the banner of this double-standard, American universities, museums, federal agencies, historical societies, and other institutions have amassed huge "collections" of Indian bodies and grave offerings; and the contents of countless Indian graves have been removed for public display and permanent storage in sacks and boxes across the nation. The exhumation, curation, and study of Indian bodies represent academic activities which have routinely been conducted in secrecy from Indian communities, or have, at minimum, been designed to circumvent the authority of Indian governments to protect human burials from desecration and disturbance -- undermining their ability to defend public sensibilities from egregious offense. Indians throughout the nation agree with the sentiments of Paul Little, a Devils Lake Sioux tribal historian: "We Indian people ... protect our dead and the things that are buried with them -- they should stay buried. No one would like it if we would dig up a graveyard -- we honor our dead and we want them protected" (Lorilea Blanchfield, "Bill would halt excavation of Indian burial sites," Daily Journal, Devils Lake, North Dakota, February 7, 1989).

These conditions are patently harmful to Indian tribes and their citizens; as a result, native communities throughout the continental United States, Alaska, and Hawaii have suffered a deep distress and communal anguish. Impairment of the ability of living Indians to fulfill their religious obligations to care for the spiritual well-being of the dead must be recognized as interference with the exercise of fundamental religious rights.

AISES urges Congress to reject any suggestion that Indian human remains should be singled out as "property" to be distributed among various federal agencies, universities, museums and assorted other public and private "owners." Indian cemeteries -- no matter where located -- should not be unilaterally confiscated and turned over to archaeologists, physical anthropologists, federal bureaucrats, or museum curators for scientific purposes. Congress should formulate public policy which does not interfere with the ability of Indian tribes to care for their dead. Unobscured accountability to Indian tribes and communities should provide the basis for the conduct of any scientific Investigation of Indian graves, human remains, and funerary offerings. Decisions to exhume, curate and study Indian human remains should be subject to the informed consent and authority of Indian tribal government and religious leaders. As matters now stand, many institutions and administrators believe that they can dictate to Indian nations how their deceased ancestors are to be handled, and non-Indian investigators have no accountability to the tribes whose ancestors are the subject of study. Until the involvement and approval of tribal authorities achieves full recognition as a fundamental condition of scientific exhumation and study of Indian dead bodies and funerary offerings, the development of even a tenuous relationship with Indian tribes will remain, in many cases, an arbitrary matter, undertaken at the discretion of individual researchers.

Despite an extensive literature which has appeared over the last 150 years, examples of studies on Indian remains which were conducted with tribal consent are extremely rare. Instead, modern libraries of American archeology and physical anthropology feature volume after volume of testimony to the historic inability of Indian people to protect the graves of their ancestors from disturbance by American scientific investigators. Few of these volumes have ever been intentionally opened to Indian tribes. Instead, Indian leaders are advised to accept on faith scientific claims concerning the value of skeletal studies to living Indian people. But the scientific study of Indian skeletal remains more often serves to advance academic disciplines and careers at the expense of Indian sensibilities, religious beliefs, and human rights. A pathologist at the Army Medical Museum pronounced with some satisfaction in 1915 that the thousands of Indian skulls -- "osteological specimens" -- assembled by the museum represented an important scientific collection "and those who understand the value of such a collection ... will appreciate the service that the Army Medical Museum has performed in behalf of American anthropology," (Daniel Smith Lamb, "The Army Medical Museum in American Anthropology," Proceedings of the Nineteenth International Congress of Americanists, Washington, December, 1915, 1917). Notably absent from this appraisal is any consideration for how Indian people might appreciate the Army Medical Museum's diligent service to anthropology. Service to Indian communities is not prominent as subject of interest to Lamb; instead, Indian communities simply provide convenient access to "resources" -- in this case, cemeteries and battlegrounds containing Indian bodies -- which can be cultivated for the development of anthropology. One army surgeon who provided dozens of Indian heads and bodies to the Army Medical Museum knew very well what Indian people would think of his labors on behalf of American anthropology: "A great deal of caution is required in obtaining any thing from the graves of Indians, and it will have to be managed very carefully to prevent the Indians from finding out that the graves of their people have been disturbed -- as this might be offered as an excuse (of course a trifling one) for taking the "War Path" again ..." (James Riding In, "Murder, Justifiable Homicide, or Headhunting? The Massacre and Decapitation of Pawnee Scout Veterans in 1869 by U.S. Soldiers and Citizens," December 1989, unpublished manuscript, p. 14, B.E. Fryer to Otis, February 5, 1868 correspondence).

Whatever arguments might be made for potential benefits of study to Indian Tribes, scientists must acknowledge that actual -- not potential or theoretical -- harm proceeds from circumstances of clandestine expropriation of the dead, confiscation of funerary offerings, and the conduct of scientific studies without tribal knowledge or consent. Under such conditions, scientific investigation can hardly be termed "objective" or "ethical" -- no matter what "benefits" might materialize. Marcia Angell, the executive editor to The New England Journal of Medicine, recently observed that "The importance of results [from scientific research] has no place in judging ethics" (Michael Specter, "When Research, Treatment Overlap," Washington Post, December 14, 1989, p. A39). It seems relevant to note that this statement was made in the context of evaluating the ethics of utilizing Nazi scientific data. The scientific excesses of Nazi Germany should serve as a reminder of what can happen when a society permits the purposes of science to overrule community consent, religious and human rights, and public sensibilities. As one survivor of experiments conducted by Dr. Mengele recently put it: "Science cannot become the master of the man" (quoted in Faye Sholiton, "The Nazis and the Laboratory," Hadassah, August/September 1989,

p. 15). AISES disagrees with reasoning which serves to elevate scientific curiosity above human rights, and which is designed to undermine the authority of Indian governments to protect the disposition and treatment of Indian human remains and grave offerings.

AISES recognizes that the treatment of the dead by American academic institutions affects Indian communities throughout the United States. At many universities, students have a considerably better chance of learning about Native Americans from Indian skeletons than from Indian professors; and the number of Indian dead bodies on campus might easily outnumber living Native American students. No university in the nation presents any other group of students with similar conditions.

When Stanford University announced in 1989 that it had made an agreement -- the first of its kind for American universities -- to honor a request for the repatriation of 550 human remains to the Ohlone Tribe, an emeritus professor of anthropology at the university asserted a claim that he owned the Indian bodies; and he subsequently threatened to sue in order to prevent the reburial of these remains by the tribal descendants ("Stanford to return Indians' remains," Lincoln Journal, June 22, 1989; "Tribes claim past held hostage," Dick Foster, Rocky Mountain News, October 5, 1989, p. 52). The Ohlone elders had negotiated with Stanford for five long years to provide for the proper disposition of their dead -- only to encounter further resistance based upon the notion that Indian skeletal remains represent "research data" subject to private ownership.

The University of Missouri curates some 1500 Indian remains, which the director of the Museum of Anthropology defined in 1989 as "a non-renewable resource essential to research"; declaring, as well, that he had "no intention of letting it go" ("Arguments rage over old Indian remains at MU." Matthew Schofield, Kansas City Star, October 1, 1989, p. 31A, 38A). The Texas Archeological Research Laboratory at the University of Texas in Austin curates thousands of Indian human remains, and the director opposes reburial: "It would be like a book burning to put them in the ground in the name of emotionalism" (Cheryl Frink "Culture, science clash over Indian remains,"Austin American-Statesman, April 23, 1989). By this means, Indians who seek the repatriation of their ancestors for reburial are compared to "book burners," and the ceremony of human burial is reduced in dignity and public meaning to an event which merely signifies the destruction of "data." William Bass, at the University of Tennessee, worried in 1981 that Indian reburial requests would infringe upon the interests of science. His perspective on these interests include little apparent concern for the impact of anthropological expropriation and study of the dead upon Indian communities: "It is disturbing to see skeletal collections such as the Crow Creek Massacre material reburied. From the viewpoint of a skeletal biologist this is similar to burning the books in our libraries" (Bass, "Skeletal Biology on the United States Great Plains: A History and Personal Narrative," Plains Anthropologist, vol.26, # 94[2], November 1981, p. 12). This perspective displays little respect for the practice of interment by Indian people; it also serves to dehumanize Indian remains.

According to one report, the University of Colorado presently hosts more deceased Indians than living Indian students -- a distinction which is shared by no other ethnic segment of the population ("The Bones of their Fathers," Richard Johnson Sunday Denver Post, Contemporary, February 4, 1990, p. 17 for estimated census of 350 remains). A survey conducted during the mid-1970s revealed that Harvard and Yale each housed some 500 Native American remains; while across the Mississippi, the University of Oklahoma reported another 500 individuals, and Arizona State University had the remains of approximately 370 Native Americans (Mahmoud El-Najjar, "The Distribution of Human Skeletal Material in the Continental United States," American Journal of Physical Anthropology, 1977, vol. 46, pp. 507-512). These represent just a few of the numerous examples of American academic institutions which curate Indian skeletal remains. Few, if any, of these repositories can produce documentation showing tribal authorization for mass exhumations or any other activities involving the dead; and examples probably do not exist in any of these universities of Indian people who consented to donate their remains to science.

The historic emphasis of American universities on building and maintaining collections of Indian skeletal remains must shift to the recruiting of living Indian students. The mission of AISES would be materially served if more Indians were brought into academic science studies as students rather than as specimens. The development of relations based on mutual respect between Indian and science communities would be considerably advanced by the conscientious application of the basic principles endorsed in this position paper.

Though this paper has focused in particular upon universities, the problems discussed here apply much more broadly to other public and private institutions. American museums engaged in systematic plundering of Native American burials during the late 19th century and early 20th century. One historian describes an 1897 expedition organized and funded by the Field Museum of Natural History in Chicago as having "the character of a fervid rip-and-run operation" -- it featured the plundering of numerous Indian burials and the arrest of the expedition's leader, George Dorsey, for grave desecration (Douglas Cole, Captured Heritage: The Scramble for Northwest Coast Artifacts, 1985, p. 175). The impact on native communities of this oppressive heritage requires appropriate redress; and through repatriation and reburial, Indian leaders hope to build a more secure future for their people, in which science and technology serve to assist -- rather than impede -- quests for tribal self-determination.

STATEMENT OF STANLEY G. JONES, SR., CHAIRMAN TULALIP TRIBES OF WASHINGTON

ON

S.1980, the "Native American Grave Protection and Repatriation Act"

BEFORE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

May 14, 1990

Mr. Chairman and Members of the Committee. I appreciate the opportunity to present the Tulalip Tribes' views and recommendations on the amended version of S.1980. It is our understanding that this version combines certain provisions from S.1021, the "Native American Grave and Burial Protection Act" and S.1980, the "Native American Repatriation of Cultural Patrimony Act."

The Committee is to be commended for its sponsorship of legislation that seeks to redress the dehumanizing trauma experienced by virtually every tribal group across the country resulting from historical desecration of Indian graves, theft of human remains, theft of objects vital to Native American cultural patrimony and other transgressions against sacred sites and pilfering of religious objects. These outrageous acts against Indian people, and others far too numerous to cite here, were committed in the past by non-Indians and were justified in the name of cultural and medical research, cultural preservation, academic pursuits, educational endeavors, etc.

As a civilized nation, entering the final decade of the 21st Century, the United States carries a moral, if not legal, obligation to erase this shameful blot on its history. S.1980 represents a favorable start in that regard. We support the general intent of this measure; however, as a confederated tribe that descended from several historical tribes, the Tulalip Tribes propose several changes to S.1980 that address our concerns and possibly those of other confederated tribes as well.

The Tulalip Tribes are a Federally-recognized Indian tribe occupying and governing the Tulalip Indian Reservation in the State of Washington. The Reservation was reserved and established pursuant to the January 22, 1855 Treaty of Point Elliott. The Tulalip Tribes are the successors-in-interest to the historical Snohomish, Snoqualmie, and Skykomish tribes and other allied tribes and bands that were signatories to the Treaty of Point Elliott.

The reorganization of the reservation tribes and bands as the Tulalip Tribes of Washington under Section 16 of the Indian Reorganization Act created, in essence, a defacto merger or confederation of the Snohomish and Snoqualmie tribes and other tribes and bands. The name "Tulalip" was adopted from the name of a large bay on the reservation known as Tulalip Bay, and the plural name, "Tulalip Tribes of Washington," was adopted to signify that the reorganized entity created under the IRA is a confederation of multiple Tribes.

Since the historical tribes and bands from which the Tulalip Tribes trace their descendancy occupied vast areas of land that were ceded to the United States under the Treaty of Point Elliott, their burial sites, deceased members' remains, sacred religious and cultural objects and religious sites located on these lands were negatively impacted by the inhumane actions of non-Indians. As the successor-in-interest to those historical tribes, the Tulalip Tribes shall, when appropriate, exercise a claim to all human remains, funerary objects, cultural and religious objects, and we shall consider the Tulalip Tribes as the sole beneficiary of any redress granted for the violation and desecration of religious sites of those historical tribes.

We have proposed further amendments to S.1980 to reduce the conflicting claims between Federally-recognized confederated tribes and non-tribal groups of Indian descendants over human remains, funerary objects and items of Native American cultural patrimony.

Our proposed amendments are attached. They would limit the definition of "Indian tribe" to federally recognized tribes and Alaska Native villages, require that claims of Indian tribes be given priority over claims of individual heirs, and provide for appeal of Review Committee decisions to the Interior Board of Indian Appeals.

The language in the present definition of "Indian tribe" that includes groups recognized by States has been excluded. In our experience, there have been instances in which a State has erroneously recognized Indian groups as Indian tribes, without thorough consideration of the evidence concerning the group's identity, tribal status or history.

We are hopeful the Committee will give favorable consideration to our proposed amendment. The Tulalip Tribes' legal counsel and legislative consultant are available to work with Committee staff on our proposed amendment.

Tulalip Tribes' Suggested Amendments to S.1980

1. Substitute the following for the definition of "Indian tribe" in section 3(a)(5):

   The term "Indian tribe" means any tribe that has been federally recognized, as evidenced by inclusion on any list that has been or is hereinafter published in the Federal Register pursuant to 25 C.F.R. §83.9(b), and any Alaska Native Village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act).

2. Add the following subsections immediately following section 6(a)(3)(C):

   (i) In resolving such disputes, claims of Indian tribes shall be given priority over claims of individual heirs.

   (ii) Decisions of the committee resolving such disputes may be appealed to the Board of Indian Appeals, which appeals shall be made in the manner provided in 43 CFR Part 4, Subpart D.

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

TESTIMONY OF EDWARD L. KANAHELE, PRESIDENT
HUI MALAMA I NA KUPUNA O HAWAI‘I NEI
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
IN SUPPORT OF THE
NATIVE AMERICAN REPATRIATION OF CULTURAL PATRIMONY ACT (S.1980) & NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT (S.1021)

MAY 28, 1990

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I. INTRODUCTION

Mr. Chairman Inouye, Vice Chairman McCain, distinguished members of the Committee, aloha kakou. I am Edward L. Kanahele, President of Hui Malama I Na Kupuna o Hawai'i Nei (Organization Caring for the Ancestors of Hawai'i). Hui Malama I Na Kupuna o Hawai'i Nei is a non-profit corporation made up of Native Hawaiians from each island, chartered to protect ancient unmarked Native Hawaiian burial sites, na iwi (bones) and funerary objects from disturbance and mistreatment. Hui Malama I Na Kupuna o Hawai'i Nei was organized in response to egregious exhumation activities involving 1,000 Native Hawaiian human remains and funerary objects at Honokahua, Maui in 1988. Members have accepted the monumental commitment associated with the historic responsibility of caring for the skelctal remains of their kupuna (ancestors) by working to assure that any skeletal remains and funerary objects removed from ancient burial places are properly and expeditiously repatriated and reinterred. Hui Malama I Na Kupuna o Hawai'i Nei continually demonstrates good faith efforts to resolve the long standing and debilitating spiritual and cultural problems created by the lack of comprehensive statutory protection for ancient unmarked Native Hawaiian burials.

I am pleased to offer testimony on behalf of Hui Malama I Na Kupuna o Hawai'i Nei, in general support of the Native American Repatriation of Cultural Patrimony Act (S.1980), the Native American Grave and Burial Protection Act (S.1921), and the proposed draft substitute.

Proper treatment of the skeletal remains and grave sites of ancestors is by no means an issue exclusive to Native Hawaiians. Since the genesis of time, mankind has faced the inevitable reality that one day the physical functions of the human body would cease. As a result, dead bodies were disposed of pursuant to beliefs and customs derived from respective cultures. Caring for the dead, as well as the sensibilities of the living, are values largely universal to people the world over. As Pawnee Indian attorney Walter R. Echo-Hawk states, "[t]hat these values are deeply ingrained in the United States is reflected in American common law and in the statutes of all 50 states that strictly prohibit mistreatment of the dead and protect the sanctity of the grave from unnecessary disturbance." 1/

My testimony is offered in the hopes that by resolving the long standing and debilitating controversy over fundamental human rights relating to the proper treatment of ancient human burial remains and funerary objects, the substitute bill will provide a process by which one of the darkest chapters in Anglo-American history which called for the theft of thousands of Native American skeletal remains from ancient graves, can be closed, and such remains and funerary objects repatriated to native descendants for proper cultural treatment. For too long, native people have been viewed as laboratory study "material" and "specimens", less human beings. However, our system of laws is

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1/ Echo-Hawk, "Tribal Efforts to Protect Against Mistreatment of Indian Dead: The Quest for Equal Protection of the Laws," 14 NARF L. REV. No. 1 (1989).

intended to reflect important societal values. Society in a real innate sense believes that all human remains should be treated properly and respectfully. The substitute bill is designed to extend statutory protection to unmarked native burial sites, and calls for the repatriation of all Native American human remains, funerary objects, sacred objects and items of cultural patrimony for proper disposition consistent with native wishes. Although broad in nature, this process attempts to accord Native American remains proper treatment and respect, amounting merely for living descendants, to equal protection of the law.

II. TRADITIONAL NATIVE HAWAIIAN BURIAL BELIEFS AND CUSTOMS

The following anecdote portrays the powerful and spiritual sensitivities Native Hawaiians attribute to the death of a loved one and the continuity of beliefs and customs centuries old:

> Grandfather was dying, and the entire 'ohana (family clan) was gathered around his sleeping mat. Soon the old man's spirit would leave his body to join the family 'aumakua (ancestor gods) in the eternity called Po. But before this final moment, the patriarch, with almost his last breath, would impart his specific mana, his canoe-building talent, to a chosen descendant.
>
> But now, Kulikuli! Noho malie. (Hush! Be silent.) The moment has come. Grandfather motions his grandson, Kelala, to come closer. Summoning his last strength, the dying man chants briefly. Then come the solemn words:
>
> 'To you my dear and beloved mo'opuna [grandson], I give my mana. May this mana, the gift of the aumakua passed down through me, guide your hand so that your canoes may be fleet as the makani (wind), as strong as nalu nui (high surf), and as bold in ocean waves as the mano (shark).'

> Bending down, Kelala places his mouth close to his grandfather's. The old man draws a deep breath, and exhales directly into Kelala's mouth. ‘Through this ha, you have received my mana,' he says, and in peace and serenity meets death. 2/

Make (Death)

Native Hawaiians believed that following make (death), the ‘uhane (spirit) remained near na iwi. Soon thereafter, the spirit could leave and enter po (eternity) to join the ‘aumakua (ancestor gods). Kaku‘ai (transfiguration) was a ritual by which to speed the spirit on its way to eternity. 3/

On the other hand, the ritual of ‘unihipili (deification) kept the spirit of the deceased alive in the bones for future service to its kahu (keeper). 4/ In such instances, the ‘uhane did not go on to eternity but remained in the present world.

Na Iwi (The Bones)

For Pre-Christian Native Hawaiians, the manifestation of immortality was in na iwi. Koko (blood) was haumia (defiling) and pela (flesh) following death was kapu (taboo). Only na iwi survived and remained the lasting embodiment of an individual. 5/ Moreover, the bones of living Native Hawaiians symbolize the link between kupuna (ancestors) and their own eventual immortality. 6/

2/ Puku‘i, Kawena, Nana I Ke Kumu (Look to the Source). Vol I. (1972) at 43-44.

3/ Id. at 115-118.

4/ Id. at 195-196.

5/ Id. at 107.

6/ Id. at 111-112.

In Native Hawaiian culture, bones were highly respected by loved ones. Accordingly, certain na iwi were guarded and treasured. The epitome of veneration by relatives resulted in ʻunihipili 7/ of bones. Just short of ʻunihipili was the practice of secretly exhuming the body of a beloved, removing and cleaning bones, and keeping them in a calabash in the home or near bedside when sleeping. 8/ Such practices of bone-keeping further demonstrated that Native Hawaiians recognized and honored the unique qualities of individuals.

However, na iwi were also coveted and despoiled by enemies of the decedent. As a result, religious beliefs associated with na iwi led to disposal practices designed to protect bones from coming into the possession of foes. 9/

Forms of Bone Desecration

There was a belief among Hawaiians that the ʻuhane was always near na iwi and that desecration of na iwi resulted in insult to the ʻuhane, as well as injury and religious trauma to living descendants of the individual. 10/ For this reason, Native Hawaiians considered certain treatment of bones as amounting to desecration.

First, leaving bones uncovered and exposed to sunlight was highly disrespectful if not outright profane. In addition,

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7/ Id. at 148.

8/ Malo, David. Hawaiian Antiquities (Moʻolelo Hawaiʻi). (1898) at 97-98.

9/ Pukuʻi at 108-109.

10/ Id. at 109.

Fornander observed that turning bones into fish hooks was considered insulting. Moreover, much worse was the nefarious misuse of a skull as a spittoon or to carry discarded food. 11/ The ultimate desecration was complete destruction of na iwi, because then the 'uhane was prevented from joining the 'aumakua in eternity. Furthermore, burning bones was considered the worse insult to the ultimate act of desecration. 12/ Modernly, the acceptable practice is to honor the wishes of the decedent, for such supersedes the kapu associated with cremation. 13/

Kia'i Kupapa'u (The Wake)

For Native Hawaiians, kia'i kupapa'u (the wake) was traditionally the time to both mourn the passing of a beloved and to celebrate the sanctity of the family. At such gatherings, the entire 'ohana (extended family) usually came together and much food was brought. 'Aha'aina make (feast of death) would soon follow. 14/ In the halau (house), family members sat around the body, whose feet faced the door. As visitors arrived a close relative would whisper to the deceased the visitor's name. 15/ As wailing commenced, memories of the deceased were recalled. The favorite mele (songs) and hula (dances) of the deceased were performed. These traditional practices amounted to farewell

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11/ Id.

12/ Id. at 109.

13/ Id. at 110.

14/ Id. at 139.

15/ Id. at 135.

communications to the still-lingering 'uhane. 16/

Kaumaha (Grief)

Native Hawaiians had various mourning practices which were largely dependent upon the status of the decedent. The intensity of uwe (wailing) was much more prominent upon the death of an ali'i (royalty). For certain royal members, na'au'auwa (deepest grief) was expressed by loyal followers through violent manifestations called manewanewa which could included knocking out front teeth, gashing the head and scarring the body 17/ Moreover, oli (chants) were composed and expressed to reflect deep sorrow and love for the departed ali'i. 18/

For the maka'ainana (lay people), mourning by family members was openly expressive but did not amount to mass emotion as that with an ali'i. 19/ Traditionally, the length of the grief period was about one year. After one year, the same persons held a second feast, 'aha'aina waimaka (feast of tears) "a joyful reunion of all who had previously shed tears together." 20/

Kanu (Burial)

As Western influence on Hawaiian culture grew, Native Hawaiians gradually discontinued two traditional funerary practices. The first, puholoholo called for the removal of flesh

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16/ Id. at 135.

17/ Id. at 133.

18/ Id. at 135.

19/ For further discussion, Puku'i at 135.

20/ Id. at 139.

from the corpse. This was done by cooking the flesh or by letting it decompose and fall off. The second, kaku'ai, called for the transfiguration of bones into a form of 'aumakua. 21/

At about the same time, two Western funerary practices became readily acceptable by Native Hawaiians. The first was use of morticians to prepare the corpse for sepulchre. The significance of acceptance being that traditionally Native Hawaiians were strict as to which individuals could handle the corpse. With an ali'i (royalty), only highly trusted blood-related retainers were permitted. For maka'ainana, only close family members. 22/ Following the funeral, family members purified themselves through rituals called pi kai (sprinkling of sea or salted water to purify from spiritual contamination and remove taboos and harmful influences) or kapu kai (ceremonial bath in the sea). 23/ The second practice, was the use of coffins. Traditionally, dead bodies were buried in various manners, including the fetal and prone positions. 24/

Funerary Objects and Spiritual Matters

Native Hawaiians also believed that funerary objects interred with the dead body were taken by the 'uhane to po. 25/

21/ Id. at 134.

22/ Id. at 135.

23/ Id. at 122; 180.

24/ See, "Hawaiian Burial Reconsidered: An Archaeological Analysis," Graduate Thesis of June Noelani Johnson Cleghorn (August 1987).

25/ Puku'i at 115-118.

This belief was expressed by saying "ho'omoe pu" ("put to sleep together"). These funerary objects accompanied the body both as comfort and sustenance for the journey to the spirit world. In earlier times such items usually included food. 26/ For an ali'i burial, a lei niho palaoa may have accompanied the body indicating social status.

It was also believed that the 'uhane took intangible matters with it beyond the grave. 27/ Regarding promises, requests, 28/ reconciliations, or other emotional or spiritual matters, the belief that such were taken with the 'uhane was expressed by saying "lawe i ka wa make" ("take in time of death"). In addition, the 'uhane could take family grudges, curses, or a name that carried harmful connotations. Moreover, unless the decedent passed on his mana, the 'uhane could take the special talent back to 'aumakua. 29/

Bones are the surviving receptacles of the 'uhane of deceased Native Hawaiians. The historic responsibility to guard and protect na iwi from various forms of desecration are squarely in the hands of living Native Hawaiian descendants.

III. INTEREST OF HUI MALAMA I NA KUPUNA O HAWAI'I NEI

Hui Malama I Na Kupuna o Hawai'i Nei is a nationally and locally recognized grass-roots organization. We are identified

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26/ Id. at 137.

27/ Id.

28/ Id. at 31.

29/ Id. at 137.

in the National Museum of the American Indian Act, 30/ (Museum Act) as having expertise in cultural matters, particularly burials. In addition, our organization is also recognized in the recently passed State of Hawai'i House Bill 3296, 31/ in which our members in concert with the State Department of Land and Natural Resources, Historic Sites Office, drafted H.B. 3296, testified in each hearing in support of the measure, negotiated all problem areas with the opposition, and secured passage by unanimous vote of both houses. 32/ The new state law provides for the protection of ancient unmarked Native Hawaiian burial sites through the setting up of island burial councils with a mandatory make-up ratio of three to one in favor of Native Hawaiians. These councils have the authority to declare an ancient unmarked burial site protected from future disturbance. The sale or exchange of skeletal remains and burial goods is prohibited and permits are required from the Department of Land and Natural Resources to transport human remains or burial goods out of state. Governor John Waihe'e is expected to schedule a signing ceremony for H.B. 3296 sometime in June, 1990.

Pursuant to the Museum Act, the Secretary of the Smithsonian Institute is mandated to inventory Native Hawaiian human remains and funerary objects in the present possession and control of the

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30/ 20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(2), P.L. 101-185, (November 28, 1989).

31/ Conference Report No. 51, April 27, 1990. (Attachment 1)

32/ Legislative History Printout, H.B. 3296. (Attachment 2)

Smithsonian Institute, notify the appropriate Native American group 33/ and enter into an agreement with an appropriate Native Hawaiian organization including Hui Malama I Na Kupuna o Hawai'i Nei to provide for the return of such human remains and funerary objects. 34/ Hui Malama has learned that there are 214 Native Hawaiian remains in the National Museum of Natural History, 35/ although an inventory we obtained from Dr. Donald J. Ortner, Chairman of the Anthropology Department, National Museum of Natural History merely identifies 120 individuals in the present possession and control of the Smithsonian. 36/ Hui Malama I Na Kupuna o Hawai'i Nei requested the Smithsonian staff resolve the discrepancy of 94 missing individuals from the computer printout provided and immediately prohibit further study of our kupuna remains. 37/ Since the human remains in wooden boxes

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33/ Upon the signing of the National Museum to the American Indian Act by President Bush, Hui Malama I Na Kupuna o Hawai'i Nei transmitted a letter dated 12/6/1989, to Smithsonian Secretary Robert Adams requesting Hui Malama I Na Kupuna o Hawai'i Nei be notified of the completion of the inventory on Native Hawaiian remains. (Attachment 3)

34/ 20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(1); Moreover, Hui Malama I Na Kupuna o Hawai'i Nei has forwarded a letter requesting expeditious resolution of return agreement issues because for us, a real sense of urgency exists to bring our family home. (Attachment 4)

35/ Dr. Michael Pietrusewsky of the University of Hawai'i Anthropology Department, who conducted extensive studies on the same Native Hawaiian collection and upon information, identifies 214 remains in the Smithsonian collection. (Attachment 5)

36/ Inventory of Native Hawaiian Remains in the Possession of the Smithsonian Institute (no date). (Attachment 6)

37/ Letter to Dr. Donald J. Ortner, May 23, 1990. (Attachment 7) are already marked "Hawaii", follow-up is not expected to take long. Moreover, Dr. Ortner has promised expediency in resolving this discrepancy. In addition, pursuant to the funding provision of the Museum Act, 38/ Hui Malama I Na Kupuna o Hawai'i Nei submitted a funding request to the Secretary of the Interior to implement the now pending return agreement. 39/

Clearly, Hui Malama I Na Kupuna o Hawai'i Nei is vitally interested in the expeditious repatriation and reinterment of all Native Hawaiian skeletal remains, funerary objects, sacred objects and items of cultural patrimony because culturally, the exodus of such remains, objects and items from Hawai'i Nei has created a spiritual void or burden in the lives of living Native Hawaiians; a wound that most certainly needs to be healed. 40/ For Native Hawaiians, the future cannot be realized, until the past is adequately cared for. 41/ For such is true, since we stand on the foundation of our kupuna. 42/

38/ 20 U.S.C. 80q § 12; 103 Stat. 1345 § 14.

39/ Letter to Interior Secretary Manuel Lujan, May 24, 1990. (Attachment 8)

40/ See, notes 2-29, infra.

41/ Mana'o (thoughts, feelings) of Kupuna Harriet Ahiona Ayau Ne, Cultural Historian, Molokai. Moreover, Ne believes one reason Native Hawaiians have been unable to lokahi (come together) is that they have not cared for na iwi of their ancestors. By failing to do so, many do not understand the connection through na iwi between past, present, and future, thereby failing to respect themselves and hence each other.

42/ Mana'o of Pualani Kanaka'ole Kanahele at the Closing Ceremony of the Honokahua Burial Site, May 6, 1990; See also, "Hawaiian remains laid back to rest - Final rites for 1,000 Maui burials," The Honolulu Advertiser (May 7, 1990). (Attachment 9)

IV. THE NEED FOR COMPREHENSIVE LEGISLATION PROTECTIVE OF UNMARKED NATIVE HAWAIIAN BURIAL SITES AND REQUIRING REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS, FUNERARY OBJECTS, SACRED OBJECTS AND ITEMS OF CULTURAL PATRIMONY

Past and present day desecration of ancient burial sites is clearly the most grisly problem facing Native Americans today. All across this nation, in card board boxes in the basements of museums, 43/ in the private collections of grave looters and body snatchers, and in the paths of bulldozer blades, lay the human remains of Native Americans including Native Hawaiians. 44/

43/ See, Bieder, "A Brief Historical Survey of the Expropriation of American Indian Remains," (April 1990) 85 pp. (Copyright NARF/Bieder) (NILL No. 006376).

44/ In Salina, Kansas, a farmer dug up a prehistoric burial site containing the skeletal remains of 146 Mandan, Hidatsa and Arikara Indians and put them on public display as a private tourist attraction. Following negotiations, an agreement was reached to properly rebury the 146 in accordance with tribal cultural and religious beliefs and customs. Subsequently, legislation was passed implementing the reburial agreement.

In Nebraska, following the removal of the Pawnee Nation to Oklahoma, private parties literally swept in and removed hundreds of dead Pawnees from ancestral burial sites. Thereafter, the Nebraska Legislature enacted the Unmarked Human Burial Sites and Skeletal Remains Protection Act mandating the return of over 500 Pawnee skeletal remains from the Nebraska State Historic Society Museum (NSHSM). However, refusal by NSHSM to comply has resulted in a suit by the Museum against the Pawnee Tribe. Nebraska State Historical Society v. Pawnee Tribe of Oklahoma, Doc. No. 448 (D.C. Lancaster Cty., Neb., filed January 23, 1990.

In California, Stanford University agreed to return 550 ancient Ohlone-Costonoan Indian remains to tribal descendants; the University of Minnesota agreed to return over 1,000 skeletal remains to respective Indian tribes; the Illinois Museum decided to shut down an exhibit featuring the exposed graves of 234 prehistoric Indians publicly displayed; and in Hawai'i, West Beach Estates destroyed one of the oldest sites of human settlement in Hawaii, removing human remains and artifacts dating back to 75 A.D.

"The obliteration involved seven burial sites, including two in which the deceased were left above-ground until no flesh was left on the skeletons and then ceremonially interred 'for eternity[.]'"

Too often, native people must rely on the good faith and sensibilities of non-natives to undo years of desecration and body-snatching of native dead, including Native Hawaiians 45/ in the name of science and profit. Nevertheless, in too many instances desecration of ancient native human remains irrespective of cultural-religious beliefs continue. Such outrageous conduct often fueled by sadistic scientific notions that native dead are "specimens" and "cultural resources" for study; that native people do not share the value of proper treatment for their dead as do other members of society. Following the announcement by Stanford University to return 550 Indian remains, the University of California-Berkeley announced that it would not return any remains or associated grave goods to any Indian tribe and dismissed those pressing for the return of ancestral remains as "born-again Indians who like to make political hay." In Maryland, 30 to 40 ancient Choptank Indian bodies unearthed by scientists remain in cardboard boxes until a dispute regarding disposition can be resolved. All the while, religious and cultural trauma haunt Indian descendants and act as a constant reminder that native people are not accorded equal protection under the law.

45/ See, Letter from Dr. Mastin to Army Medical Museum:
"When I parted with you a month ago, I told you I would send you 'a skull' and I now comply - for I send by express to you a present, the skull of a 'Sandwich Islander.' It is genuine for 'I knew him well,' attended him in his last illness, and made his head responsible for his medical bill - It has served my purpose, and I turn it over to you. . .I procured his head . . . I now place it, a native offering, on the Alter of Science. . ." (Attachment 10)

In Hawai'i, more than 3,000 remains of Native Hawaiians are kept in the Bernice Pauahi Bishop Museum. 46/ However, to its credit, the State's largest repository of Native Hawaiian remains and valuable cultural artifacts has recently adopted a policy calling for the repatriation upon request, of any set of human remains and funerary objects. 47/

Nevertheless, unknown numbers of Native Hawaiian skeletal remains and associated funerary objects disinterred over the years 48/ are in the confines of the University of Hawai'i at Manoa Department of Anthropology, courtesy of Pietrusewsky, et al., 49/ or in parts unknown. Moreover, in the past, Native Hawaiian remains disinterred by construction activities or even by natural erosion, were simply thrown away or incinerated. Hence, one erie facet to resolving this debilitating problem is that not all Native Hawaiian human remains disinterred over the years will ever be located and properly reinterred.

46/ "Human Skeletal Collections in the Bishop Museum," by Michael Pietrusewsky, November 1971. (Attachment 11)

47/ "Policy on Release of Human Remains." (Attachment 12)

48/ Survey of all published excavation reports of Native Hawaiian human remains in Hamilton Library, University of Hawai'i as of May 25, 1990 by Hui Malama I Na Kupuna o Hawai'i Nei. (Attachment 13); Moreover, knowledge of undocumented excavations have been taken by responsible persons to their grave.

49/ On a recent field trip to the warehouse at Kualoa, O'ahu in which a large collection of ancient Hawaiian artifacts is curated, Dr. Paul Cleghorn of the Bishop Museum revealed that the Native Hawaiian human remains removed from Kualoa are, in the words of Michael Pietrusewsky, being "protected" at the University of Hawai'i. To date Pietrusewsky has not published an inventory of the Kualoa remains although the former curator of the Kualoa warehouse collection believes one has been completed.

Without further belaboring the point, there exists a clear need to provide comprehensive statutory protection for unmarked burial sites of Native Americans including Native Hawaiians and a process mandating repatriation of Native American human remains, funerary objects, sacred objects and items of cultural patrimony in the possession and control of federal agencies and institutions receiving federal funding.

Moreover, there exists the need to provide Native American descendants with a direct say whether ancient native burial sites will be protected from ground disturbing activities or relocated, reburied, and properly cared for in the land--not destroyed, put on public display, studied in the laboratory of Dr. Frankenstein nor to collect dust in card board boxes in some faceless museum.

Unequivocally, the time has arrived for the United States Congress to embrace the need for equal protection of the law for Native American ancestors and descendants and embellish such need by enacting comprehensive legislation protective of ancient Native American skeletal remains and funerary objects and mandating repatriation to proper cultural descendants. Such efforts will help begin to heal the spiritual trauma caused to Native Americans because of the knowledge that their ancestors were so harshly mistreated, their final places of rest, desecrated and robbed. The provisions of this legislation will only complement the repatriation provisions of the unprecedented National Museum of the American Indian Act and demonstrate Congress' commitment to the words, "all men are created equal."

V. LEGAL BASIS FOR THE LEGISLATION

For a thorough discussion of this topic, please see the testimony of Walter R. Echo-Hawk at 20-22 (May 14, 1990).

With respect to Native Hawaiians, the provisions of the substitute bill prohibiting the disturbance of Native American remains without native consent is clearly consistent with the provisions of the newly passed Hawai'i H.B. 3296 that provides island burial councils the authority to decide to protect Native Hawaiian remains in place.

In addition, the provisions of the substitute that mandate inventory, identification, notification and repatriation mirror the National Museum of the American Indian Act, albeit the new bill substantially expands upon the Museum Act by including sacred objects and items of cultural patrimony. Such expansion is both culturally correct 50/ and consistent with American property law. 51/ Moreover, the repatriation process envisioned by the substitute is also consistent with the Bishop Museum repatriation policy, which is already being implemented by concerned Hui Malama I Na Kupuna o Hawai'i Nei members. 52/

50/ See, note 25, infra.

51/ See, "Testimony of Walter R. Echo-Hawk Before the Senate Select Committee on Indian Affairs on the Native American Repatriation of Cultural Patrimony Act (S.1980) and the Native American Grave and Burial Protection Act (S.1021) (May 14, 1990)"

52/ See, Letter from Edward Halealoha Ayau dated 1/19/90 to Dr. Duckworth, Director, Bishop Museum requesting inventory of Native Hawaiian remains expropriated from Molokai; see also, response letter from Duckworth dated 4/16/90; see, Letter from Edward Halealoha Ayau dated 4/19/90 regarding discrepancy in inventory provided; finally see, Letter from Duckworth 4/26/90 resolving the discrepancy. (Attachment 14)

VI. COMMENTS AND PROPOSED CHANGES TO THE SUBSTITUTE BILL

Hui Malama I Na Kupuna o Hawai'i Nei is pleased with the language and intent of the substitute bill. The following are comments and observations of the bill as applicable to Hawai'i:

1. There is federal and state overlap on Hawaiian Home Lands with H.B. 3296 and the substitute both prohibiting the disturbance of Native Hawaiian remains located therein. Moreover, the overlap is a result of the language in section 4(a) of the federal bill which on its face applies to all lands, federal, state and private. H.B. 3296 creates island burial councils authorized to decide whether to protect or relocate on state lands, hence, it may seem that a situation might exist where the burial council, Hui Malama I Na Kupuna o Hawai'i Nei and the Office of Hawaiian Affairs will be involved to decide the fate of burials found on state land. However, where the state has specifically legislated in an area under which it has jurisdiction, unless Congress has the authority to legislate in the area and makes clear its intent to supersede the state legislation, the state law should control.

2. The repatriation of human remains and funerary objects provisions of the federal bill will be applicable to the University of Hawai'i at Manoa's collection of Native Hawaiian remains and the Bishop Museum's collection should it decide to repeal its return policy.

3. The bill's provisions on repatriation of sacred objects and items of cultural patrimony will also apply to the Bishop

Museum calling for the return of all objects used in religious ceremonies and items otherwise owned by the Native Hawaiians as a people.

4. As Native Hawaiians, we are descended from Southern Polynesian ancestors, many who came from New Zealand, Tahiti, the Marquesas, the Society Islands, and Samoa. They truly are our ancestors and we must care for them. Hui Malama I Na Kupuna o Hawai'i Nei therefore believes that the repatriation provisions must cover remains from the aforementioned island groups and other Polynesian islands. Language could include simple notification of the fact that ancestral remains are in the hands of museums and institutions (particularly the Bishop Museum and the University of Hawai'i), and are available for repatriation.

The following are proposed amendments, mostly technical in nature, to the language of the substitute bill for consideration:

1. **Page 2, line 5:** Use the term "Native Americans" instead of "Indian tribes" to more accurately reflect the fact that American Indians, Native Hawaiians and Alaskan Natives have all expressed a clear and unequivocal interest in repatriation of the human remains of their ancestors. See, National Museum of the American Indian Act, 103 Stat. 1336, P.L. 101-185, 20 U.S.C. 80q, Section 2(8).

2. **Page 10, line 3:** For consistency, use the term "items" instead of "objects" since the reference is to cultural patrimony.

3. **Page 10, line 24:** Add the words "items of" prior to the

words "Native American cultural patrimony . . ."

4. **Page 11, lines 11-20:** There should be language reflecting the need for Native Americans including Native Hawaiians to be consulted by the Secretary of Interior regarding the promulgation of repatriation regulations. However, if such is already assumed, it should be made clear.

5. **Page 12, line 15:** Again for consistency, use the term "items" instead of "objects" since the reference is to cultural patrimony.

6. **Page 13, line 14:** Clarify in the Committee Report that use of the term "inventory," where unnecessary as with prehistoric remains removed from the Hawaiians Islands, should not include osteological analysis, but rather only documentation research as to locality taken from. Even if prehistoric remains from Hawai'i cannot be identified as to locality, Hawaiian culture provides that the western most part of the western most island be the appropriate place for reinterment.

7. **Page 13, lines 18 - 21:** There should be a reference to an "appropriate Native Hawaiian organization" since we have no recognized sovereign government or entity separate from the State of Hawai'i, and the notion of traditional religious leaders was rejected by conferees of the Native Hawaiian Burials Seminar including Pualani Kanaka'ole Kanahele and Parley Kanaka'ole.

8. **Page 14, line 15:** Since expeditious repatriation is the goal, then the time allotted for notification once the inventory is completed should be "by no later than 1 month . . ."

Past experience with the Smithsonian Institute regarding the 214 Native Hawaiian remains in their possession has made it clear that identification of remains from Hawai'i is self-evident. However, the Smithsonian completed its inventory December 1, 1989 and did not notify Hui Malama I Na Kupuna o Hawai'i Nei. We discovered this on May 18, 1990 when one of our members visited the National Museum of Natural History and met with Dr. Ortner. Thereafter it was discovered that a discrepancy existed involving 94 unaccounted for individuals.

9. **Page 15, line 15:** Is the word "or" necessary?

10. **Page 16, line 7:** Use the term "Native American group" instead of "organization." Moreover, there should be language that such places of reinterment, at the request of the Native American group need not be made public, thereby helping to prevent future looting or expropriation.

11. **Page 16, line 9 and Page 17, line 7:** In both instances, the word "if" needs to be capitalized.

12. **Page 18, line 9:** Again for consistency, use the term "items" instead of "objects" since the reference is to cultural patrimony.

13. **Page 18, line 11:** Following the word "study," add the language "initiated not less than one year prior to the enactment of this Act." to protect against studies being initiated by disgruntled archaeologists at present, in order to delay repatriation assuming the bill is enacted. Please note that Pietrusewsky is at present studying the 214 Hawaiian remains at

the Smithsonian to the horror of Hui Malama I Na Kupuna o Hawai'i Nei.

14. **Page 18, lines 13 - 18:** It is unclear as to what the term "items" is referring to. If it is intended to refer only to "items of cultural patrimony," then how long does a museum or agency have to return human remains, funerary objects, or sacred objects? This paragraph needs to be clarified.

15. **Page 19, line 2:** I believe the word should be "repatriation" and not "restoration."

16. **Page 19, lines 12 - 15:** It is difficult to conceive how the Review Committee will be able to monitor museums and federal agencies located nationwide. Moreover, for consistency sake, may want to use the language used in § 5(a)(2)(e) of this bill.

17. **Page 19, lines 23 - 25:** Since disputes may arise between museums or agencies and Native American groups, there should be an appropriate dispute resolution process in the event that such disagreements arise.

18. **Page 20, line 6:** Please include the word "proper" to describe the manner of disposition. Many Native Hawaiians are sensitive to the use of the term "disposition" because for them it means throwing something away, the opposite of what is intended.

19. **Page 20, line 19:** The word "late" should be "later."

20. **Page 21, line 3:** Instead of "free" use "unrestricted."

21. **Page 22, line 10:** Use of both the terms "return and repatriate" is unnecessary because repatriate means to return.

VII. CONCLUSION

Mr. Chairman Inouye, Vice Chairman McCain, distinguished members of the Committee, Hui Malama I Na Kupuna o Hawai'i Nei recognizes the exhaustive, good faith efforts that have gone into the substitute draft and extends its aloha to all those whose persistence have led to this historic piece of legislation. We believe that concerns raised by museum interests have been met and a viable process exists in the instant bill by which the culturally sensitive decision relating to proper treatment of prehistoric Native Hawaiian burials can be made in consideration and respect of the legal rights and interests of such institutions.

Moreover, a genuine recognition that Native Hawaiian human remains should be protected and not disturbed without the consent of living Native Hawaiians and that all remains, funerary objects, sacred objects, and items of cultural patrimony be repatriated to the proper Native American group is absolutely appropriate both as a matter of law and as a matter of moral obligation. Clearly, each day that passes by devoid of substantive statutory protection for ancient remains of Native Hawaiians and each day that unprotected remains collect dust in agencies, museums, and universities is a day in which equal protection of the law is denied the first citizens of Hawai'i and America. In the immortal words of Walter R. Echo-Hawk, the thousands of skeletal remains in museums "are mute testimonials" to the need for such statutory protection.

Native Hawaiians cannot wait any longer while the bones of their kupuna continue to collect dust in the drawers of museums and the University of Hawai'i. Given the past history of the destruction of the bones of our ancestors and the desecration of Native Hawaiian burial sites, our backs are already against the wall. Therefore, we Native Hawaiians bring our concerns to you, the policy makers of the United States and ask that you do what is lawful, and absolutely equitable. We urge the Senate Select Committee on Indian Affairs carefully consider the proposed amendments stated herein and thereafter unequivocally support the substitute bill. Mahalo for your time and consideration of this utmost important human rights issue.

Respectfully Submitted,

Edward L. Kanahele
President
Hui Malama I Na Kupuna o Hawai'i Nei

STATE OF HAWAII
ALL INFORMATION FOR A BILL
1990 Regular Session

Date: 5/ 2/90
Time: 3:35 p.m.
Page: 1
Leg. day:62

HB 3296 HD 2 SD 1 CD 1 - RELATING TO BURIALS

By Representative(s) APO / HAGINO

Companion Bill: SB 2981

Keywords: Department of land & natural resources, Hawaiians, Historic preservation, Public administration

Citations:

Report Title: Burials

Description:

Seq.	Date	Page	History Text
	1-26-90	H	Introduced, passed First Reading and referred to the committee on Legislative Management
	1-29-90	H	Referred to the committees on WLD/JUD, and then referred to the committee on FIN, referral sheet 9
	2- 8-90	H	Bill scheduled to be heard by WLD/JUD on Tuesday, 02-13-90 at 8:30 a.m. in State Capitol conference room 314.
	2-13-90	H	Preliminarily recommends that the measure be deferred for further discussion.
	2-15-90	H	Bill scheduled to be heard by WLD/JUD on Friday, 02-16-90 at 9:00 a.m. in House conference room 416.
	2-16-90	H	Reported from the committee on WLD/JUD (Stand. Com. Rep. No. 379-90) as amended in (HD 1), recommending passage on Second Reading and referral to the committee on FIN
	2-16-90	H	Passed Second Reading as amended in (HD 1) and referred to the committee on FIN
	2-23-90	H	Bill scheduled to be heard by FIN on Tuesday, 02-27-90 at 1:30 p.m. in State Capitol conference room 307.
	3- 1-90	H	Preliminarily recommends that the measure be passed as amended.
	3- 2-90	H	Reported from the committee on FIN (Stand. Com. Rep. No. 664-90) as amended in (HD 2), recommending passage on Third Reading
	3- 2-90	H	Forty-eight (48) hours notice 03-05-90
	3- 5-90	H	Deferred to 03-07-90
	3- 7-90	H	Passed Third Reading
	3- 7-90	H	The vote was as follows: 51 ayes with none voting no
	3- 7-90	H	Transmitted to Senate
	3- 8-90	S	Received from House (Hse. Com. No. 372)
	3- 8-90	S	Passed First Reading
	3- 9-90	S	Referred to 1. CAP 2. WAM
	3-15-90	S	Bill scheduled to be heard by CAP on 03-19-90.
	3-23-90	S	Reported from CAP (Stand. Com. Rep. No. 2795) with

STATE OF HAWAII
ALL INFORMATION FOR A BILL
1990 Regular Session

Date: 5/ 2/90
Time: 3:35 p.m.
Page: 2
Leg. day:62

HB 3296 HD 2 SD 1 CD 1 - RELATING TO BURIALS

		recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM
3-23-90	S	Passed Second Reading, as amended (SD 1) and referred to WAM.
4- 4-90	S	Bill scheduled to be heard by WAM on 04-05-90.
4- 6-90	S	Reported from WAM (Stand. Com. Rep. No. 3004) with recommendation of passage on Third Reading
4- 6-90	S	48 hours notice 04-09-90
4- 9-90	S	Report adopted; Passed Third Reading, as amended (SD 1). Ayes, 24. Noes, 0 (). Excused, 1 (Chang).
4- 9-90	S	Transmitted to House
4-12-90	H	Returned from Senate (Sen. Com. No. 560) in amended form (SD 1)
4-12-90	H	House disagrees with Senate amendment(s)
4-12-90	H	House conferees appointed: Hagino, Metcalf, Fukunaga (Co-)Chairman; Apo, Ige, D., Isbell, Kanoho, Hemmings
4-17-90	S	Received notice of disagreement and appointment of House conferees (Hse. Com. No. 630).
4-17-90	S	Senate Conferees appointed: Yamasaki, (Co-)Chairman; Hagino, Solomon, Tungpalan, George
4-23-90	H	Bill scheduled for Conference Committee Meeting on Tuesday, 04-24-90 at 3:30 p.m. in House conference room 212.
4-23-90	S	Conference committee meeting scheduled to be heard on 04-24-90.
4-27-90	H	Reported from Conference Committee (Conf. Com. Rep. No. 51) as amended in (CD 1)
4-27-90	H	Forty-eight (48) hours notice 04-30-90
4-27-90	S	Reported from Conf. Com. as amended CD 1 (Conf. Com. Rep. No. 51)
4-27-90	S	48 Hrs. Notice (as amended CD 1)
4-30-90	S	Passed Final Reading, as amended (CD 1). Ayes, 25. Noes, 0 (). Excused, 0 ().
4-30-90	H	Passed Final Reading as amended in (CD 1)
4-30-90	H	The vote was as follows: 51 ayes with none voting no

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

copy

December 6, 1987

Secretary Adams
Smithsonian Institute
1000 Jefferson Drive, SW
Washington, D.C.
20560

Dear Secretary Adams:

SUBJECT: National American Indian Museum Bill

I am Edward L. Kanahele the President of the grassroots, non-profit, organization called Hui Malama I Na Kupuna O Hawai'i Nei. The group is dedicated to protect our ancestors both living and dead. The group is a native Hawaiian based organization that is active through out the State of Hawai'i.

I would like to ask you that I would appreciate it if I could be kept informed of developments regarding the native Hawaiian remains at the Smithsonian Institute. My group will petition for the return of the native Hawaiian remains from the Smithsonian Institute upon implmentation of the National American Indian Museum Act.

May I also request an update regarding the inventory and identification of native Hawaiian remains and accompanying burial goods now at the Smithsonian Institute.

Sincerely,

Edward L. Kanahele

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

May 24, 1990

Dr. Donald J. Ortner
Department of Anthropology
National Museum of Natural History
NHB 223 Smithsonian Institution
Washington, D.C. 20560

Re: Return Agreement Regarding 214 Native Hawaiian Skeletal Remains and Funerary Objects in the Present Possession and Control of the Smithsonian Institute

Dear Dr. Ortner:

Aloha. This follows up on our missive dated May 23, 1990 to further explore issues that Hui Malama I Na Kupuna o Kawai‘i Nei and the Smithsonian Institute should resolve in order to enter into the return agreement required by 20 U.S.C. 80q § 11(a)(2). As we stated in our previous letter, Hui Malama I Na Kupuna o Hawai‘i Nei takes the position that the only issues to be resolved regarding return of the Native Hawaiian na iwi (bones) and funerary objects, is the time and manner in which such remains and objects are to be obtained by Hui Malama I Na Kupuna o Hawai‘i Nei. As a result, we feel the following issues require careful thought, consideration and resolution:

1. The date that the remains and objects will be obtained;

2. Whether the Smithsonian is amendable to the conduct of traditional ceremonies at the Museum before, during and after the remains and objects are properly prepared for transport?

3. Whether the Smithsonian is agreeable to allowing members of Hui Malama I Na Kupuna o Hawai‘i Nei access to the remains and objects at night?

4. Whether the Smithsonian is agreeable to minimizing the presence of non-Native Hawaiians by restricting access to the third floor while the ceremonies and preparation activities re going on and until such are completed and the entourage has left?

5. Whether the Smithsonian is agreeable to placing locks on the wooden drawers marked "Hawaii" containing the human remains of Native Hawaiians until such time as the date of transfer is determined?

Page Two
Letter to Dr. Ortner

Again, Hui Malama I Na Kupuna o Hawai'i Nei seek expeditious resolution to the long standing and debilitating problem of repatriating its family members home to Hawai'i. We continue to pray for their protection. We thank you in advance for your attention to this most important matter. Please feel free to contact myself (808) 959-9832 (R) or (808) 933-3421 (B) or Edward Halealoha Ayau (808) 521-2302 (B) or (808) 531-8022 (R).

Sincerely,

E.H. Ayau for

Edward L. Kanahele
President

cc: Honorable Senator Daniel K. Inouye
Honorable Senator Daniel K. Akaka
Secretary Robert Adams,
Smithsonian Institute
Trustee Frenchy Desoto,
Office of Hawaiian Affairs

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

SURVEY OF 120 OF 214 NATIVE HAWAIIAN REMAINS IN THE COLLECTION OF THE SMITHSONIAN INSTITUTE, MUSEUM OF NATURAL HISTORY

May 24, 1990

Island	Total	Locality	Responible Party
Hawa‘i	56	Napo‘opo‘o (40) (Cliff cave facing sea)	----
		Hilea (Ka‘u) (16)	F. Huthinson (4) E. Mastin (1) W. Jones (1) Unknown (10)
Kaua‘i	47	South side beach (47)	V. Kruidsen (47)
Maui	9	Wailuku (ancient cemetery)	Wilkes (5) J. Couthouy (4)
Lana‘i	4	Unknown beach	-----
O‘ahu	4	Koko Head (1) Bellows Beach (2) Unknown (1)	

rec'd. 8/4/89

University of Hawaii at Manoa

Department of Anthropology
Porteus Hall 346 • 2424 Maile Way
Honolulu, Hawaii 96822

Enclosed, please find some information on the number of skeletons from Hawaii in the Smithsonian. As I mentioned by telephone, the total is around 214. In error, I entered the total for Polynesia (266), which is supported by the summary sheet enclosed herewith, in the published article. My estimate, taken from a tally of catalogue entries, cannot be far off the mark. I have visited the Smithsonian (in 1984) and personally saw a few of the specimens.

It would be a great pity and dis-service to the Hawaiian community if these remains are rebuired. We stand to learn so much about the biology, health, culture, genetics etc. of ancient Hawaiians if such collections remain available to researchers who use them in their research, some of whom, I might add, are of Hawaiian ancestry.

Please feel free to call on me again on matters concerning human skeeltal remains.

Sincerely,

M. Pietrusewsky

Michael Pietrusewsky
Professor

National Museum of Natural History · Smithsonian Institution
WASHINGTON, D.C. 20560 · TEL. 202-381-5456

February 26, 1979

Dr. Michael Pietrusewsky
Associate Professor
Department of Anthropology
University of Hawaii at Manoa
Porteus Hall 346 - 2424 Maile Way
Honolulu, Hawaii 96822

Dear Mike:

Your letter of January 22 asking about our collections "from Oceania (including Indonesia), Southeast Asia and East Asia" was referred to me.

I am enclosing a photocopy of our index cards for all of the groups that could come under these headings, and probably include several areas that you are not interested in.

The vast majority of this is cranial, with some postcranial material occasionally. There are some busts or casts of fossils that got onto these cards by mistake but they are easily recognized. I am reluctant to get a computer printout of the specimens however, because I am uncertain which areas to omit. Also, the computer listing omitted age and sex, and entries such as "skeletal parts" could refer to anything from a pair of finger bones to miscellaneous long bones from 10 or more people. In short, I doubt that it would tell very much more than this listing.

In general, each number corresponds to one specimen. Materials marked "AMM 1904" were collected, usually, between 1840 and 1900; in the period when only the skull, usually without lower jaw, was collected. There are a few exceptions, of course. If you have Hrdlicka's old Catalog of Crania for Australia, etc., this lists his sexing and may give clues about mandibles. As you can see, this is a lengthy list, and it would take a great deal of time to supply the details you mention. If there are certain small series for which details are useful, perhaps I could have someone dig this out for you.

It was a great pleasure meeting you last fall. My stay in Honolulu was quite profitable -- I learned much about Hawaiian skeletal material and teeth which I could not have learned from our collections. Mishandling, bad storage and other problems had led to the teeth of most of our skulls getting broken or lost; but I was able to find examples in our series to confirm what I saw in the Bishop Museum. Thanks again for your advice.

Sincerely yours,

L. E. St. Hoyme
Associate Curator
Department of Anthropology

HAWAII

1

Locality	Cat. No.	Collector
Pahala Kau	204,636	J. Holland (1900)
Lanay Island	217,822-5	U.S.Fish Com. (1902)
—	225,158	Army Med. Mus. (1904)
Kauai	225,159-67	V. Kruidsen (AMM 1904)
"	225,329	" " " "
Oahu	225,330-2	W. H. Jones " "
Wailuku	225,335	J. P. Couthony " "
—	225,337	W. H. Jones " "
Wailuku	225,333	J. P. Couthony " "
Kalihiwai, Kauai	225,334	Wilke's Exp. " "
Kauai	225,336	V. Kruidsen " "
Kauai	225,338-40	" " " "
Wailuku	225,341-3	J. P. Couthony " "

ADP

2

HAWAII

Locality	Cat. No.	Collector
Kauai	225,344-66	V. Kruidsen (AMM 1904)
Wailuku	225,368	J.P.Couthony " "
Kauai	225,369-71	V. Kruidsen " "
—	225,372	Wilke's Exp. " "
Kauai	225,373-80	V. Kruidsen " "
Wailuku	225,381	J.P.Couthony " "
—	225,390	E. L. Boyd " "
Kauai	225,458-71	V. Kruidsen " "
"	225,479-82	" " " "
Wailuku	225,483	J.P.Couthony " "
Kauai	225,484-8	V. Kruidsen " "
—	225,489	W. H. Jones " "
Coco Head	225,490	J. D. Dana " "

ADP

HAWAII

3

Locality	Cat. No.	Collector
Wailuku	225,491-2	J. P. Couthony (AMM 1904)
Kauai	225,493	V. Kruidsen " "
Kauai	225,514-8	" " " "
—	225,519	F. W. Hutchinson " "
Kauai	225,520-6	V. Kruidsen " "
Honolulu	225,527	F.H.Streets " "
Kauai	225,528	V. Kruidsen " "
--	225,529	F. W. Hutchinson " "
Kauai	225,530	V. Kruidsen " "
Honolulu	225,531	F.H.Streets " "
Kauai	225,532-6	V. Kruidsen " "
Kauai	225,537	F.W.Hutchinson " "
Kauai	225,538-9	V. Kruidsen " "
ADP —	225,540	F.W.H

HAWAII

Locality	Cat. No.	Collector
Kanai --	225,541-2	V. Kruidsen (AMM 1904)
--	225,543	F.W.Hutchinson " "
Kauai	225,544-9	V. Kruidsen " "
Wailuku	225,550	J. P. Couthony " "
Kauai	225,551-65	V. Kruidsen " "
--	225,566-8	F.W.Hutchinson " "
--	226,009	E.H.Mastin " "
Oahm	226,160-2	W.H.Jones " "
Napoopoo	289,143-82	August Busck (1915)
Kau district	331,251-9	Truman Michelson (1926)
Oahu	339,707	F.C.Pyne (1927)
Lanai id.	380,239	H.T. Stearns (1946)

A D P

HAWAII

5

Locality	Cat. No.	Collector
--	381,046	Dr. W. H. Jones, USN
Oahu	381,047	W. C. Davidson, USS Olympia
Hawaii(?)	(225,280 225,282	Wilkes Exp. Ex.(AMM 1904
Hawaii: Bellows AFS	382,090-091	US Dept of Defense (USAF, OSI District 44, LCol.W.R Bellamy, CDR.)(1960)

A D P

Approximate Number of Skulls from Oceania, Asia, and Southeast Asia in the National Museum of Natural History

Smithsonian Institution
Washington, D.C.

Australia		
Exact loc.unknown	9	
Central Australia	4	
South Australia	8	
Western Australia	5	
Victoria	9	
Northern Territory	44	
	79	
Torres Strait	6	
Papua New Guinea		
New Britain	42	
Melanesia		
Solomon Is.	6	
New Hebrides	1	
Fiji	10	
	17	
Polynesia		
Samoa	1	
Thaiti	4	
Tuamotu Is.	7	
New Zealand	30	
Chatham Is.	10	
Käuai, Hawaiian Is.	125	
Napoopoo, Hi.	40	> 214
Hawaii (loc.?)	49	
	266	
Micronesia		
Guam	1	
Indonesia	22	
Philippines	29	
Negirto	12	
	41	
China	114	
Japan	19	
Mongolia	206	

HUI MALAMA I NA KUPUNA O HAWAI‘I NEI
P.O. Box 5134 \ Hilo, Hawai‘i 96720

SURVEY OF 120 OF 214 NATIVE HAWAIIAN REMAINS
IN THE COLLECTION OF
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May 24, 1990

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Maui	9	Wailuku (ancient cemetery)	Wilkes (5) J. Couthouy (4)
Lana‘i	4	Unknown beach	-----
O‘ahu	4	Koko Head (1) Bellows Beach (2) Unknown (1)	

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                                         "HAWAII STATE INVENTORY"
P: 001 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                 ....6....V....7....V....

SERIAL  00217822 ******************************  00217823 ******************************  00217825 ******************************
002 01  P0217822                                 P0217823                                 P0217825
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  LANAI ISLAND                             LANAI ISLAND                             LANAI ISLAND
105 01  NOT GIVEN                                NOT GIVEN                                NOT GIVEN
106 01  BEACH                                    BEACH                                    BEACH
156 01  00041092                                 00041092                                 00041092
299 01  N                                        N                                        N
400 01  S                                        S                                        S
    02                                           M
410 01  AS                                       AS                                       AS
500 01  C                                        C                                        C
516 01  U                                        U                                        U
555 01  E                                        X                                        X
560 01  X                                        X                                        X
565 01  X                                        X                                        X
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * E * *                                * * * * *                                * * * * *
920 01  09 404 006 03                            09 404 006 03                            09 404 006 03
999 01  P02178220                                P02178230                                P02178250

SERIAL  00225333 ******************************  00225335 ******************************  00225341 ******************************
002 01  P0225333                                 P0225335                                 P0225341
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  MAUI ISLAND                              MAUI ISLAND                              MAUI ISLAND
105 01  WAILUKU                                  WAILUKU                                  WAILUKU
106 01  ANCIENT CEMETERY                         ANCIENT CEMETERY                         ANCIENT CEMETERY
156 01  00042109                                 00042109                                 00042109
158 01  07 01 1904                               07 01 1904                               07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM
161 01  T                                        T                                        T
162 01  COUTHOUY, J. P. (DR.)                    COUTHOUY, J. C. (DR.)                    COUTHOUY, J. P. (DR.)
205 01  00281 (AMM)                              00282 (AMM)                              00280 (AMM)
206 01  04584 (SI MAMM)                          04367 (SI MAMM)                          04583 (SI MAMM)
207 01  00013 (WILKES)                           00015 (WILKES)                           00014 (WILKES)
299 01  N                                        N                                        N
400 01  S                                        S                                        S
410 01  AS                                       AS                                       AS
500 01  M                                        A                                        M
516 01  F                                        F                                        F
555 01  A                                        D                                        D
    02  D                                        E
560 01  X                                        X                                        X
565 01  X                                        X                                        X
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * * * *                                * * * * *                                * * * * *
920 01  09 404 006 02                            09 404 006 01                            09 404 006 01
999 01  P02253330                                P02253350                                P02253410

SERIAL  00225342 ******************************  00225381 ******************************  00225458 ******************************
002 01  P0225342                                 P0225381                                 P0225458
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                                                 "HAWAII STATE INVENTORY"
P: 002 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                  ....6....V....7....V....

100 01   U.S.A.                                  U.S.A.                                    U.S.A.
102 01   HAWAII                                  HAWAII                                    HAWAII
104 01   MAUI ISLAND                             MAUI ISLAND                               KAUAI ISLAND (SOUTH SIDE)
105 01   WAILUKU                                 WAILUKU
106 01   ANCIENT CEMETERY                        ANCIENT CEMETERY                          BEACH
156 01   00042109                                00042109                                  00042109
158 01   07 01 1904                              07 01 1904                                07 01 1904
160 01   ARMY MEDICAL MUSEUM                     ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01   T                                       T                                         T
162 01   COUTHOUY, J. P. (DR.)                   COUTHOUY, J. P. (DR.)                     KRUIDSEN, V.
205 01   00279 (AMM)                             00284 (AMM)                               00860 (AMM)
206 01   04585 (SI MAMM)                         04587 (SI MAMM)                           11663 (SI MAMM)
207 01   00016 (WILKES)                          00019 (WILKES)
299 01   N                                       N                                         N
400 01   S                                       S                                         S
410 01   AS                                      AS                                        AS
500 01   M                                       M                                         C
516 01   M                                       M                                         U
555 01   X                                       E                                         A
    02                                                                                     D
560 01   X                                       X                                         X
565 01   X                                       X                                         X
570 01   * * * * *                               * * * * *                                 * * * * *
575 01   * * * * *                               * * * * *                                 * * * * *
920 01   09 404 006 01                           09 404 007 11                             09 404 007 11
999 01   P02253420                               P02253810                                 P02254580

SERIAL   00225459 ****************************** 00225460 ******************************   00225461 ******************************
002 01   P0225459                                P0225460                                  P0225461
100 01   U.S.A.                                  U.S.A.                                    U.S.A.
102 01   HAWAII                                  HAWAII                                    HAWAII
104 01   KAUAI ISLAND (SOUTH SIDE)               KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01   BEACH                                   BEACH                                     BEACH
156 01   00042109                                00042109                                  00042109
158 01   07 01 1904                              07 01 1904                                07 01 1904
160 01   ARMY MEDICAL MUSEUM                     ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01   T                                       T                                         T
162 01   KRUIDSEN, V.                            KRUIDSEN, V.                              KRUIDSEN, V.
205 01   00567 (AMM)                             00599 (AMM)                               00565 (AMM)
206 01   00000 (SI MAMM)                         00000 (SI MAMM)                           00000 (SI MAMM)
299 01   N                                       N                                         N
400 01   S                                       S                                         S
410 01   AS                                      AS                                        AS
500 01   C                                       M                                         M
516 01   U                                       F                                         F
555 01   D                                       X                                         X
560 01   X                                       X                                         X
565 01   X                                       X                                         D
570 01   * * * * *                               * * * * *                                 * * * * *
575 01   * * * * *                               * * * * *                                 * * * * *
920 01   09 404 007 11                           09 404 007 11                             09 404 007 10
999 01   P02254590                               P02254600                                 P02254610
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                                                   "HAWAII STATE INVENTORY"
P:  003 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

SERIAL  00225462 ******************************  00225463 ******************************  00225464 ******************************
002 01  P0225462                                 P0225463                                 P0225464
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                    BEACH
156 01  00042109                                 00042109                                 00042109
158 01  07 01 1904                               07 01 1904                               07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM
161 01  T                                        T                                        T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                             KRUIDSEN, V.
205 01  00569 (AMM)                              00571 (AMM)                              00612 (AMM)
206 01  00000 (SI MAMM)                          00000 (SI MAMM)                          00000 (SI MAMM)
299 01  N                                        N                                        N
400 01  S                                        S                                        S
410 01  AS                                       AS                                       AS
500 01  A                                        M                                        M
516 01  FU                                       M                                        FU
555 01  X                                        X                                        X
560 01  X                                        X                                        X
565 01  X                                        X                                        X
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * * * *                                * * * * *                                * * * * *
920 01  09 404 007 10                            09 404 007 10                            09 404 007 10
999 01  P02254620                                P02254630                                P02254640

SERIAL  00225465 ******************************  00225466 ******************************  00225467 ******************************
002 01  P0225465                                 P0225466                                 P0225467
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                    BEACH
156 01  00042109                                 00042109                                 00042109
158 01  07 01 1904                               07 01 1904                               07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM
161 01  T                                        T                                        T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                             KRUIDSEN, V.
205 01  00563 (AMM)                              00568 (AMM)                              00606 (AMM)
206 01  00000 (SI MAMM)                          00000 (SI MAMM)                          00000 (SI MAMM)
299 01  N                                        N                                        N
400 01  S                                        S                                        S
410 01  AS                                       AS                                       AS
500 01  M                                        M                                        M
516 01  M                                        FU                                       M
555 01  D                                        X                                        X
560 01  X                                        X                                        X
565 01  X                                        X                                        X
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * * * *                                * * * * *                                * * * * *
920 01  09 404 007 10                            09 404 007 10                            09 404 007 10
999 01  P02254650                                P02254660                                P02254670

SERIAL  00225468 ******************************  00225469 ******************************  00225470 ******************************
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                                                 "HAWAII STATE INVENTORY"
P: 004 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                  ....6....V....7....V....

002 01    P0225468                               P0225469                                  P0225470
100 01    U.S.A.                                 U.S.A.                                    U.S.A.
102 01    HAWAII                                 HAWAII                                    HAWAII
104 01    KAUAI ISLAND (SOUTH SIDE)              KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01    BEACH                                  BEACH                                     BEACH
156 01    00042109                               00042109                                  00042109
158 01    07 01 1904                             07 01 1904                                07 01 1904
160 01    ARMY MEDICAL MUSEUM                    ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01    T                                      T                                         T
162 01    KRUIDSEN, V.                           KRUIDSEN, V.                              KRUIDSEN, V.
205 01    00570 (AMM)                            00610 (AMM)                               00608 (AMM)
206 01    00000 (SI MAMM)                        00000 (SI MAMM)                           00000 (SI MAMM)
299 01    N                                      N                                         N
400 01    S                                      S                                         S
410 01    AS                                     AS                                        AS
500 01    M                                      M                                         M
516 01    F                                      F                                         F
555 01    E                                      C                                         X
560 01    X                                      X                                         X
565 01    X                                      X                                         X
570 01    • • • • •                              • • • • •                                 • • • • •
575 01    • • • • •                              • • • • •                                 • • • • •
920 01    09 404 007 10                          09 404 007 10                             09 404 007 10
999 01    P02254680                              P02254690                                 P02254700
                                                 .
SERIAL    00225471 ••••••••••••••••••••••••••••  00225479 •••••••••••••••••••••••••••••••  00225480 •••••••••••••••••••••••••••••••
002 01    P0225471                               P0225479                                  P0225480
100 01    U.S.A.                                 U.S.A.                                    U.S.A.
102 01    HAWAII                                 HAWAII                                    HAWAII
104 01    KAUAI ISLAND (SOUTH SIDE)              KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01    BEACH                                  BEACH                                     BEACH
156 01    00042109                               00042109                                  00042109
158 01    07 01 1904                             07 01 1904                                07 01 1904
160 01    ARMY MEDICAL MUSEUM                    ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01    T                                      T                                         T
162 01    KRUIDSEN, V.                           KRUIDSEN, V.                              KRUIDSEN, V.
205 01    00605 (AMM)                            00424 (AMM)                               00579 (AMM)
206 01    00000 (SI MAMM)                        08234 (SI MAMM)                           00000 (SI MAMM)
299 01    N                                      N                                         N
400 01    S                                      S                                         S
    02                                           M
410 01    AS                                     AS                                        AS
500 01    M                                      M                                         C
516 01    F                                      F                                         U
555 01    X                                      A                                         X
    02                                           C
560 01    X                                      X                                         X
565 01    X                                      X                                         X
570 01    • • • • •                              • • • • •                                 • • • • •
575 01    • • • • •                              • • • • •                                 • • • • •
920 01    09 404 007 09                          09 404 007 09                             09 404 007 09
999 01    P02254710                              P02254790                                 P02254800
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                                                  "HAWAII STATE INVENTORY"
P:  005 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

SERIAL  00225481 ******************************  00225482 ******************************  00225483 ******************************
002 01  P0225481                                  P0225482                                  P0225483
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)                 MAUI ISLAND
105 01                                                                                      WAILUKU
106 01  BEACH                                     BEACH                                     ANCIENT CEMETERY
156 01  00042109                                  00042109                                  00042109
158 01  07 01 1904                                07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                         T                                         T
162 01  KRUIDSEN, V.                              KRUIDSEN, V.                              COUTHOUY, J. P. (DR.)
205 01  00592 (AMM)                               00427 (AMM)                               00285 (AMM)
206 01  00000 (SI MAMM)                           08237 (SI MAMM)                           04589 (SI MAMM)
207 01                                                                                      00023 (WILKES)
299 01  N                                         N                                         N
400 01  S                                         S                                         S
410 01  AS                                        AS                                        AS
500 01  A                                         C                                         M
516 01  FU                                        U                                         FU
555 01  D                                         A                                         X
560 01  X                                         X                                         X
565 01  X                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 007 09                             09 404 007 09                             09 404 007 09
999 01  P02254810                                 P02254820                                 P02254830

SERIAL  00225484 ******************************  00225485 ******************************  00225486 ******************************
002 01  P0225484                                  P0225485                                  P0225486
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                     BEACH                                     BEACH
156 01  00042109                                  00042109                                  00042109
158 01  07 01 1904                                07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                         T                                         T
162 01  KRUIDSEN, V.                              KRUIDSEN, V.                              KRUIDSEN, V.
205 01  00425 (AMM)                               00578 (AMM)                               00613 (AMM)
206 01  00000 (SI MAMM)                           00000 (SI MAMM)                           00000 (SI MAMM)
299 01  N                                         N                                         N
400 01  S                                         S                                         S
    02  M                                         M
410 01  AS                                        AS                                        AS
500 01  M                                         M                                         M
516 01  M                                         F                                         F
555 01  X                                         X                                         X
560 01  X                                         X                                         X
565 01  X                                         D                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 007 09                             09 404 007 09                             09 404 007 09
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                                                    "HAWAII STATE INVENTORY"
P: 006 ....2....V....3....V....4....V....5....V     ....2....V....3....V....4....V....5....V        ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                    ....6....V....7....V....                        ....6....V....7....V....

921 01    X4 025 003 00
999 01    P02254840                                 P02254850                                       P02254860

SERIAL    00225487 ******************************   00225488 ******************************         00225489 ******************************
002 01    P0225487                                  P0225488                                        P0225489
100 01    U.S.A.                                    U.S.A.                                          U.S.A.
102 01    HAWAII                                    HAWAII                                          HAWAII
104 01    KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)                       KAUAI DISTRICT
105 01                                                                                              HILEA (1 MI. NORTHWEST)
106 01    BEACH                                     BEACH                                           RED HILL (NEAR) IN LAVA FLOW CAVE
156 01    00042109                                  00042109                                        00042109
158 01    07 01 1904                                07 01 1904                                      07 01 1904
160 01    ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                             ARMY MEDICAL MUSEUM
161 01    T                                         T                                               T
162 01    KRUIDSEN, V.                              KRUIDSEN, V.                                    JONES, W. H. (DR.)
205 01    00614 (AMM)                               00421 (AMM)                                     01555 (AMM)
206 01    00000 (SI MAMM)                           08231 (SI MAMM)                                 14420 (SI MAMM)
299 01    N                                         N                                               N
400 01    S                                         S                                               S
    02                                                                                              M
410 01    AS                                        AS                                              AS
500 01    A                                         M                                               M
516 01    F                                         F                                               F
555 01    C                                         X                                               X
560 01    X                                         X.                                              X
565 01    X                                         X                                               X
570 01    * * * * *                                 * * * * *                                       * * * * *
575 01    * * * * *                                 * * * * *                                       * * * * *
920 01    09 404 007 09                             09 404 007 08                                   09 404 007 08
999 01    P02254870                                 P02254880                                       P02254890

SERIAL    00225490 ******************************   00225491 ******************************         00225492 ******************************
002 01    P0225490                                  P0225491                                        P0225492
100 01    U.S.A.                                    U.S.A.                                          U.S.A.
102 01    HAWAII                                    HAWAII                                          HAWAII
104 01    OAHU ISLAND, "OUTER SOUND"                MAUI ISLAND                                     MAUI ISLAND
103 01    CACO; COCO (COCO HEAD?)                   WAILUKU                                         WAILUKU
106 01    BURIAL CAVE                               ANCIENT CEMETERY                                ANCIENT CEMETERY
156 01    00042109                                  00042109                                        00042109
158 01    07 01 1904                                07 01 1904                                      07 01 1904
160 01    ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                             ARMY MEDICAL MUSEUM
161 01    T                                         T                                               T
162 01    DANA, J. D.                               COUTHOUY, J. P. (DR.)                           COUTHOUY, J. P. (DR.)
205 01    00291 (AMM)                               00287 (AMM)                                     00286 (AMM)
206 01    04590 (SI MAMM)                           04591 (SI MAMM)                                 04588 (SI MAMM)
207 01    00020 (WILKES)                            00024 (WILKES)                                  00020 (WILKES)
299 01    N                                         N                                               N
400 01    S                                         S                                               S
    02                                                                                              M
410 01    AS                                        AS                                              AS
500 01    M                                         M                                               M
516 01    F                                         F                                               M
555 01    X                                         C                                               X
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                                                    "HAWAII STATE INVENTORY"
P:  007 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

560 01  X                                         X                                         X
565 01  D                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 007 08                             09 404 007 08                             09 404 007 08
999 01  P02254900                                 P02254910                                 P0225492U

SERIAL  00225493 ******************************   00225529 ******************************   00225540 ******************************
002 01  P0225493                                  P0225529                                  P0225540
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                       *            HAWAII                       *
104 01  KAUAI ISLAND (SOUTH SIDE)                 KAUAI DISTRICT                            KAUAI DISTRICT
105 01                                            HILEA (1 MI. NORTHWEST)                   HILEA (1 MI. NORTHWEST)
106 01  BEACH                                     RED HILL (NEAR) IN LAVA FLOW CAVE         RED HILL (NEAR) IN LAVA FLOW CAVE
156 01  00042109                                  00042109                                  00042109
158 01  07 01 1904                                07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                         T                                         T
162 01  KRUIDSEN, V.                              HUTCHINSON, F. W. (DR.)                   HUTCHINSON, F. W. (DR.)
205 01  00423 (AMM)                               00713 (AMM)                               00705 (AMM)
206 01  00000 (SI MAMM)
399 01  N                                         N                                         N
400 01  S                                         S                                         S
    02  M                                         M                                         M
410 01  AS                                        AS                                        AS
500 01  M                                         M                                         M
518 01  M                                         MU                                        F
555 01  X                                         X                                         X
560 01  X                                         X                                         X
565 01  X                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 007 08                             09 404 007 06                             09 404 007 05
999 01  P02254930                                 P02255290                                 P02255400

SERIAL  00225541 ******************************   00225542 ******************************   00225544 ******************************
002 01  P0225541                                  P0225542                                  P0225544
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                     BEACH                                     BEACH
156 01  00042109                                  00042109                                  00042109
158 01  07 01 1904                                07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                         T                                         T
162 01  KRUIDSEN, V.                              KRUIDSEN, V.                              KRUIDSEN, V.
205 01  00433 (AMM)                               00447 (AMM)                               00585 (AMM)
206 01  08243 (SI MAMM)                           08258 (SI MAMM)                           00000 (SI MAMM)
299 01  N                                         N                                         N
400 01  S                                         S                                         S
    02  M                                         M                                         M
410 01  AS                                        AS                                        AS
412 01  HAWAIIAN                                  HAWAIIAN                                  HAWAIIAN
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                                                   "HAWAII STATE INVENTORY"
P:  008 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

500 01  M                                          M                                          M
516 01  M                                          F                                          F
555 01  B                                          X                                          X
    02  C
    03  E
560 01  X                                          X                                          X
565 01  X                                          D                                          X
570 01  * * * * *                                  * * * * *                                  * * * * *
575 01  * * * * *                                  * * * * *                                  * * * * *
640 01  BUTTON OSTEOMA.  MACROCEPHALY. 1870 CC.C   MISSING MAXILLARY M3
    01   CENTIMETERS
920 01  09 404 007 05                              09 404 007 05                              09 404 007 05
999 01  P02255410                                  P02255420                                  P02255440

SERIAL  00225545 ******************************    00225546 ******************************    00225547 ******************************
002 01  P0225545                                   P0225546                                   P0225547
100 01  U.S.A.                                     U.S.A.                                     U.S.A.
102 01  HAWAII                                     HAWAII                                     HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                  KAUAI ISLAND (SOUTH SIDE)                  KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                      BEACH                                      BEACH
156 01  00042109                                   00042109                                   00042109
158 01  07 01 1904                                 07 01 1904                                 07 01 1904
160 01  ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM
161 01  T                                          T                                          T
162 01  KRUIDSEN, V.                               KRUIDSEN, V.                               KRUIDSEN, V.
205 01  00441 (AMM)                                00442 (AMM)                                00577 (AMM)
206 01  08252 (SI MAMM)                            08253 (SI MAMM)                            00000 (SI MAMM)
299 01  N                                          N                                          N
400 01  S                                          S                                          S
    02  M                                          M                                          M
410 01  AS                                         AS                                         AS
412 01  HAWAIIAN                                   HAWAIIAN                                   HAWAIIAN
500 01  M                                          M                                          M
516 01  F                                          M                                          F
555 01  X                                          X                                          D
560 01  X                                          X                                          X
565 01  X                                          X                                          X
570 01  * * * * *                                  * * * * *                                  * * * * *
575 01  * * * * *                                  * * * * *                                  * * * * *
640 01                                             1812 CC                                    CRIBRA ORBITALIA
920 01  09 404 007 05                              09 404 007 05                              09 404 007 05
999 01  P02255450                                  P02255460                                  P02255470

SERIAL  00225548 ******************************    00225549 ******************************    00225550 ******************************
002 01  P0225548                                   P0225549                                   P0225550
100 01  U.S.A.                                     U.S.A.                                     U.S.A.
102 01  HAWAII                                     HAWAII                                     HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                  KAUAI ISLAND (SOUTH SIDE)                  MAUI ISLAND
105 01                                                                                        WAILUKU
106 01  BEACH                                      BEACH                                      ANCIENT CEMETERY
156 01  00042109                                   00042109                                   00042109
158 01  07 01 1904                                 07 01 1904                                 07 01 1904
160 01  ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM
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                                                  "HAWAII STATE INVENTORY"
P:  009 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V    ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                    ....6....V....7....V....

161 01  T                                         T                                           T
162 01  KRUIDSEN, V.                              KRUIDSEN, V.                                COUTHOUY, J. P. (DR.)
205 01  00436 (AMM)                               00838 (AMM)                                 00283 (AMM)
206 01  08246 (SI MAMM)                           11651 (SI MAMM)                             04574 (SI MAMM)
207 01                                                                                        00021 (WILKES)
299 01  N                                         N                                           N
400 01  S                                         S                                           S
    02  M                                         M                                           M
410 01  AS                                        AS                                          AS
412 01  HAWAIIAN                                  HAWAIIAN
500 01  M                                         M                                           M
516 01  M                                         M                                           M
555 01  B                                         X                                           X
560 01  X                                         C                                           X
565 01  D                                         X                                           X
570 01  * * * * *                                 * * * * *                                   * * * * *
575 01  * * * * *                                 * * * * *                                   * * * * *
640 01  MISSING M3. ANTERIOR DENTITION LOST ANTE
    01  MORTEM. BUTTON OSTEOMAMA
920 01  09 404 007 04                             09 404 007 04                               09 404 007 04
999 01  P02255480                                 P02255490                                   P02255500

SERIAL  00225551 ******************************   00225552 *********************************   00225553 *********************************
002 01  P0225551                                  P0225552                                    P0225553
100 01  U.S.A.                                    U.S.A.                                      U.S.A.
102 01  HAWAII                                    HAWAII                                      HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)                   KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                     BEACH                                       BEACH
156 01  00042109                                  00042109                                    00042109
158 01  07 01 1904                                07 01 1904                                  07 01 1904
160 01  ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM                         ARMY MEDICAL MUSEUM
161 01  T                                         T                                           T
162 01  KRUIDSEN, V.                              KRUIDSEN, V.                                KRUIDSEN, V.
205 01  00853 (AMM)                               00455 (AMM)                                 00457 (AMM)
206 01  11671 (SI MAMM)                           08260 (SI MAMM)                             08268 (SI MAMM)
299 01  N                                         N                                           N
400 01  S                                         S                                           S
    02  M                                         M                                           M
410 01  AS                                        AS                                          AS
412 01  HAWAIIAN                                  HAWAIIAN                                    HAWAIIAN
500 01  M                                         M                                           M
516 01  F                                         M                                           M
555 01  X                                         D                                           D
560 01  X                                         X                                           X
565 01  D                                         X                                           D
570 01  * * * * *                                 * * * * *                                   * * * * *
575 01  * * * * *                                 * * * * *                                   * * * * *
640 01  MISSING M3                                POROTIC HYPEROSTOSIS                        POROTIC HYPEROSTOSIS.  MISSING M3
920 01  09 404 007 04                             09 404 007 04                               09 404 007 04
999 01  P02255510                                 P02255520                                   P02255530

SERIAL  00225554 ******************************   00225555 *********************************   00225556 *********************************
002 01  P0225554                                  P0225555                                    P0225556
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                                                 *HAWAII STATE INVENTORY*
P: 010 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V   ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                   ....6....V....7....V....

100 01  U.S.A.                                   U.S.A.                                     U.S.A.
102 01  HAWAII                                   HAWAII                                     HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                  KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                      BEACH
156 01  00042109                                 00042109                                   00042109
158 01  07 01 1904                               07 01 1904                                 07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM
161 01  T                                        T                                          T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                               KRUIDSEN, V.
205 01  00848 (AMM)                              00454 (AMM)                                00446 (AMM)
206 01  11675 (SI MANN)                          08265 (SI MANN)                            08257 (SI MANN)
299 01  N                                        N                                          N
400 01  S                                        S                                          S
    02  M                                        M                                          M
410 01  AS                                       AS                                         AS
412 01  HAWAIIAN                                 HAWAIIAN                                   HAWAIIAN
500 01  M                                        M                                          M
516 01  M                                        F                                          F
555 01  A                                        D                                          X
    02  C
560 01  X                                        X                                          X
565 01  X                                        D                                          X
570 01  * * * * *                                * * * * *                                  * * * * *
575 01  * * * * *                                * * * * *                                  * * * * *
840 01  TRAUMA WITH INFECTION LEFT FRONTAL       POROTIC HYPEROSTOSIS.  MISSING M3
920 01  09 404 007 04                            09 404 007 04                              09 404 007 04
999 01  P02255540                                P02255550                                  P02255560

SERIAL  00225557 ******************************* 00225558 *********************************  00225559 *********************************
002 01  P0225557                                 P0225558                                   P0225559
100 01  U.S.A.                                   U.S.A.                                     U.S.A.
102 01  HAWAII                                   HAWAII                                     HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                  KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                      BEACH
156 01  000:2109                                 00042109                                   00042109
158 01  07 01 1904                               07 01 1904                                 07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                        ARMY MEDICAL MUSEUM
161 01  T                                        T                                          T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                               KRUIDSEN, V.
205 01  00445 (AMM)                              00428 (AMM)                                00432 (AMM)
206 01  00000 (SI MANN)                          08238 (SI MANN)                            08242 (SI MANN)
299 01  N                                        N                                          N
400 01  S                                        S                                          S
    02  M                                        M                                          M
410 01  AS                                       AS                                         AS
412 01  HAWAIIAN                                 HAWAIIAN                                   HAWAIIAN
500 01  M                                        M                                          M
516 01  M                                        F                                          F
555 01  X                                        C                                          X
560 01  X                                        X                                          X
565 01  X                                        X                                          X
570 01  * * * * *                                * * * * *                                  * * * * *
575 01  * * * * *                                * * * * *                                  * * * * *
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                                                 "HAWAII STATE INVENTORY"
P: 011 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                  ....6....V....7....V....

920 01  09 404 007 04                            09 404 007 03                             09 404 007 03
999 01  P02255570                                P02255580                                 P02255590

SERIAL  00225560 ******************************  00225561 *******************************  00225562 *******************************
002 01  P0225560                                 P0225561                                  P0225562
100 01  U.S.A.                                   U.S.A.                                    U.S.A.
102 01  HAWAII                                   HAWAII                                    HAWAII
104 01  KAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                     BEACH
156 01  00042109                                 00042109                                  00042109
158 01  07 01 1904                               07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                        T                                         T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                              KRUIDSEN, V.
205 01  00422 (AMM)                              00440 (AMM)                               00843 (AMM)
206 01  08230 (SI MAMM)                          08257 (SI MAMM)                           11667 (SI MAMM)
299 01  N                                        N                                         N
400 01  S                                        S                                         S
    02  M                                        M                                         M
410 01  AS                                       AS                                        AS
412 01  HAWAIIAN                                 HAWAIIAN                                  HAWAIIAN
500 01  M                                        M                                         M
516 01  F                                        M                                         M
555 01  A                                        A                                         X
560 01  X                                        X                                         X
565 01  X                                        X                                         X
570 01  * * * * *                                * * * * *                                 * * * * *
575 01  * * E * *                                * * * * *                                 * * * * *
640 01  THREE PENETRATING WOUNDS TO SKULL.       BROKEN NOSE.
920 01  09 404 007 03                            09 404 007 03                             09 404 007 03
999 01  P02255600                                P02255610                                 P02255620

SERIAL  00225563 ******************************  00225564 *******************************  00225565 *******************************
002 01  P0225563                                 P0225564                                  P0225565
100 01  U.S.A.                                   U.S.A.                                    U.S.A.
102 01  HAWAII                                   HAWAII                                    HAWAII
104 01  XAUAI ISLAND (SOUTH SIDE)                KAUAI ISLAND (SOUTH SIDE)                 KAUAI ISLAND (SOUTH SIDE)
106 01  BEACH                                    BEACH                                     BEACH
156 01  00042109                                 00042109                                  00042109
158 01  07 01 1904                               07 01 1904                                07 01 1904
160 01  ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
161 01  T                                        T                                         T
162 01  KRUIDSEN, V.                             KRUIDSEN, V.                              KRUIDSEN, V.
205 01  00443 (AMM)                              00452 (AMM)                               00453 (AMM)
206 01  08254 (SI MAMM)                          08263 (SI MAMM)                           08269 (SI MAMM)
299 01  N                                        N                                         N
400 01  S                                        S                                         S
    02  M                                        M                                         M
410 01  AS                                       AS                                        AS
412 01  HAWAIIAN                                 HAWAIIAN                                  HAWAIIAN
500 01  M                                        M                                         M
516 01  F                                        FU                                        M
555 01  X                                        A                                         X
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                                                           "HAWAII STATE INVENTORY"
      P:  012 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
      03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

      560 01   X                                        X                                         X
      565 01   X                                        X                                         X
      570 01   * * * * *                                * * * * *                                 * * * * *
      575 01   * * * * *                                * * * * *                                 * * * * *
      640 01                                            POSSIBLE PENETRATING WOUNDS TO SKULL, PO
          01                                            SSIBLE DECAPITATION.
      920 01   09 404 007 03                            09 404 007 03                             09 404 007 03
      999 01   PO2255630                                PO2255640                                 PO2255650

      SERIAL   00225566 ******************************  00225567 ******************************  00225568 ******************************
      002 01   PO225566                                 PO225567                                  PO225568
      100 01   U.S.A.                                   U.S.A.                      *             U.S.A.                      *
      102 01   HAWAII                  *                HAWAII                                    HAWAII
      104 01   KAUAI DISTRICT                           KAUAI DISTRICT                            KAUAI DISTRICT
      105 01   HILEA (1 MI. NORTHWEST)                  HILEA (1 MI. NORTHWEST)                   HILEA (1 MI. NORTHWEST)
      106 01   RED HILL (NEAR) IN LAVA FLOW CAVE        RED HILL (NEAR) IN LAVA FLOW CAVE         RED HILL (NEAR) IN LAVA FLOW CAVE
      156 01   00042109                                 00042109                                  00042109
      158 01   07 01 1904                               07 01 1904                                07 01 1904
      160 01   ARMY MEDICAL MUSEUM                      ARMY MEDICAL MUSEUM                       ARMY MEDICAL MUSEUM
      161 01   T                                        T                                         T
      162 01   HUTCHINSON, F. W. (DR.)                  HUTCHINSON, F. W. (DR.)                   HUTCHINSON, F. W. (DR.)
      205 01   00708 (AMM)                              00711 (AMM)                               00706 (AMM)
      299 01   N                                        N                                         N
      400 01   S                                        S                                         S
          02   M                                        M                                         M
      410 01   AS                                       AS                                        AS
      500 01   M                                        M                                         M
      516 01   M                                        M                                         M
      555 01   X                                        X                                         D
      560 01   X                                        X                                         X
      565 01   X                                        X                                         X
      570 01   * * * * *                                * * * * *                                 * * * * *
      575 01   * * * * *                                * * * * *                                 * * * * *
      920 01   09 404 007 03                            09 404 007 03                             09 404 007 02
      999 01   PO2255660                                PO2255670                                 PO2255680

      SERIAL   00226009 ******************************  00226547 ******************************  00289143 ******************************
Child 002 01   PO226009                                 PO226547                                  PO289143
      100 01   U.S.A.                                   U.S.A.                                    U.S.A.
      102 01   HAWAII                      *            HAWAII                                    HAWAII
      104 01   KAUAI DISTRICT                           LANAI ISLAND                              NOT GIVEN
      105 01   HILEA (1 MI. NORTHWEST)                  NOT GIVEN                                 NAPOOPOO
      106 01   RED HILL (NEAR) IN LAVA FLOW CAVE) incorrect BEACH                                 CAVE IN CLIFF FACING SEA
      156 01   00042109                                 00000000                                  00059072
      158 01   07 01 1904
      160 01   ARMY MEDICAL MUSEUM
      161 01   T
      162 01   MASTIN, E. H. (DR.)
      205 01   01057 (AMM)
      299 01   N                                        N                                         N
      400 01   S                                        S                                         S
      410 01   AS                                       AS                                        AS
      412 01                                            HAWAIIAN
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                                                 "HAWAII STATE INVENTORY"
P:  013 ....2....V....3....V....4....V....5....V ....2....V....3....V....4....V....5....V ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                 ....6....V....7....V....                 ....6....V....7....V....

500 01   M                                       M                                        C
516 01   MU                                      F                                        U
555 01   X                                       X                                        D
560 01   X                                       X                                        X
565 01   X                                       X                                        X
570 01   • • • • •                               • • • • •                                • • • • •
575 01   • • • • •                               • • • • •                                • • • • •
920 01   09 404 007 02                           09 404 007 02                            09 404 008 14
999 01   P02260090                               P02265470                                P02891430

SERIAL   00289144 •••••••••••••••••••••••••••••• 00289145 ••••••••••••••••••••••••••••••  00289146 ••••••••••••••••••••••••••••••
002 01   P0289144                                P0289145                                 P0289146
100 01   U.S.A.                                  U.S.A.                                   U.S.A.
102 01   HAWAII                                  HAWAII                                   HAWAII
104 01   NOT GIVEN                               NOT GIVEN                                NOT GIVEN
105 01   NAPOOPOO                                NAPOOPOO                                 NAPOOPOO
106 01   CAVE IN CLIFF FACING SEA                CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA
156 01   00059072                                00059072                                 00059072
299 01   N                                       N                                        N
400 01   S                                       S                                        S
    02                                                                                    M
410 01   AS                                      AS                                       AS
500 01   C                                       C                                        C
516 01   U                                       U                                        U
555 01   X                                       E                                        X
560 01   X                                       X                                        X
565 01   X                                       X                                        X
570 01   • • • • •                               • • • • •                                • • • • •
575 01   • • • • •                               • • • • •                                • • • • •
920 01   09 404 008 14                           09 404 008 14                            09 404 008 14
999 01   P02891440                               P02891450                                P02891460

SERIAL   00289147 •••••••••••••••••••••••••••••• 00289148 ••••••••••••••••••••••••••••••  00289149 ••••••••••••••••••••••••••••••
002 01   P0289147                                P0289148                                 P0289149
100 01   U.S.A.                                  U.S.A.                                   U.S.A.
102 01   HAWAII                                  HAWAII                                   HAWAII
104 01   NOT GIVEN                               NOT GIVEN                                NOT GIVEN
105 01   NAPOOPOO                                NAPOOPOO                                 NAPOOPOO
106 01   CAVE IN CLIFF FACING SEA                CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA
156 01   00059072                                00059072                                 00059072
299 01   N                                       N                                        N
400 01   S                                       S                                        S
410 01   AS                                      AS                                       AS
500 01   C                                       I                                        I
516 01   U                                       U                                        U
555 01   D                                       E                                        X
560 01   X                                       X                                        X
565 01   X                                       X                                        X
570 01   • • • • •                               • • • • •                                • • • • •
575 01   • • • • •                               • • • • •                                • R • • •
920 01   09 404 008 14                           09 404 008 14                            09 404 008 14
999 01   P02891470                               P02891480                                P02891490
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                                                  "HAWAII STATE INVENTORY"
P:  014 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

SERIAL  00289150 ******************************  00289151 ******************************  00289152 ******************************
002 01  P0289150                                 P0289151                                 P0289152
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  NOT GIVEN                                NOT GIVEN                                NOT GIVEN
105 01  NAPOOPOO                                 NAPOOPOO                                 NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA
156 01  00059072                                 00059072                                 00059072
299 01  N                                        N                                        N
400 01  SF                                       LSF                                      S
410 01  AS                                       AS                                       AS
500 01  I                                        I                                        C
516 01  U                                        U                                        U
555 01  X                                        X                                        A
560 01  X                                        X                                        X
565 01  X                                        X                                        X
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * * * *                                * * * * *                                * * * * *
920 01  09 404 008 14                            09 404 008 14                            09 404 008 14
999 01  P02891500                                P02891510                                P02891520

SERIAL  00289153 ******************************  00289154 ******************************  00289155 ******************************
002 01  P0289153                                 P0289154                                 P0289155
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  NOT GIVEN                                NOT GIVEN                                NOT GIVEN
105 01  NAPOOPOO                                 NAPOOPOO                                 NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA
156 01  00059072                                 00059072                                 00059072
299 01  N                                        N                                        N
400 01  S                                        S                                        S
    02                                                                                    M
410 01  AS                                       AS                                       AS
500 01  M                                        M                                        M
516 01  F                                        F                                        M
555 01  D                                        A                                        C
    02                                           B                                        D
560 01  X                                        X                                        X
565 01  D                                        D                                        D
570 01  * * * * *                                * * * * *                                * * * * *
575 01  * * * * *                                * * * * *                                * * * * *
920 01  09 404 007 01                            09 404 007 01                            09 404 007 01
    02. 09 404 008 14                            09 404 008 14                            09 404 008 14
999 01  P02891530                                P02891540                                P02891550

SERIAL  00289156 ******************************  00289157 ******************************  00289158 ******************************
002 01  P0289156                                 P0289157                                 P0289158
100 01  U.S.A.                                   U.S.A.                                   U.S.A.
102 01  HAWAII                                   HAWAII                                   HAWAII
104 01  NOT GIVEN                                NOT GIVEN                                NOT GIVEN
105 01  NAPOOPOO                                 NAPOOPOO                                 NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA                 CAVE IN CLIFF FACING SEA
156 01  00059072                                 00059072                                 00059072
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                                                  "HAWAII STATE INVENTORY"
P:  015 ....2....V....3...:V....4....V....5....V  ....2....V....3....V....4....V....5....V          ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                          ....6....V....7....V....

299 01  N                                         N                                                 N
400 01  S                                         S                                                 S
    02  M                                         M                                                 M
410 01  AS                                        AS                                                AS
500 01  M                                         M                                                 M
516 01  M                                         F                                                 F
555 01  B                                         D                                                 X
    02  D
560 01  X                                         X                                                 X
565 01  X                                         X                                                 X
570 01  • • • • •                                 • • • • •                                         • • • • •
575 01  • • • • •                                 • • • • •                                         • • • • •
920 01  09 404 007 01                             09 404 007 01                                     09 404 007 01
    02  09 404 008 14                             09 404 008 14                                     09 404 008 14
999 01  P02891560                                 P02891570                                         P02891580

SERIAL  00289159 •••••••••••••••••••••••••••••••  00289160 •••••••••••••••••••••••••••••••••••••••  00289161 •••••••••••••••••••••••••••••••••••••••
002 01  P0289159                                  P0289160                                          P0289161
100 01  U.S.A.                                    U.S.A.                                            U.S.A.
102 01  HAWAII                                    HAWAII                                            HAWAII
104 01  NOT GIVEN                                 NOT GIVEN                                         NOT GIVEN
105 01  NAPOOPOO                                  NAPOOPOO                                          NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA                          CAVE IN CLIFF FACING SEA
156 01  00059072                                  00059072                                          00059072
299 01  N                                         N                                                 N
400 01  LM                                        PP                                                PP
410 01  AS                                        AS                                                AS
500 01  C                                         M                                                 M
516 01  U                                         M                                                 M
555 01  X                                         X                                                 X
560 01  X                                         B                                                 X
    02                                            E
565 01  X                                         X                                                 X
570 01  • • • • •                                 • • • • •                                         • • • • •
575 01  • • • • •                                 • • • • •                                         • • • • •
920 01  09 404 007 01                             09 404 008 13                                     09 404 008 13
    02  09 404 008 14
999 01  P02891590                                 P02891600                                         P02891610

SERIAL  00289162 •••••••••••••••••••••••••••••••  00289163 •••••••••••••••••••••••••••••••••••••••  00289164 •••••••••••••••••••••••••••••••••••••••
002 01  P0289162                                  P0289163                                          P0289164
100 01  U.S.A.                                    U.S.A.                                            U.S.A.
102 01  HAWAII                                    HAWAII                                            HAWAII
104 01  NOT GIVEN                                 NOT GIVEN                                         NOT GIVEN
105 01  NAPOOPCO                                  NAPOOPOO                                          NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA                          CAVE IN CLIFF FACING SEA
156 01  00059072                                  00059072                                          00059072
299 01  N                                         N                                                 N
400 01  PP                                        PP                                                PP
410 01  AS                                        AS                                                AS
500 01  M                                         M                                                 M
516 01  F                                         F                                                 F
555 01  X                                         X                                                 X
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                                         "HAWAII STATE INVENTORY"
P:  016 ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....8....V
03/02/90....6....V....7....V....                  ....6....V....7....V....                  ....6....V....7....V....

560 01  A                                         X                                         X
565 01  X                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 008 13                             09 404 008 13                             09 404 008 13
999 01  P02891620                                 P02891630                                 P02891640

SERIAL  00289165 ******************************  00289166 ******************************  00289167 ******************************
002 01  P0289165                                  P0289166                                  P0289167
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
104 01  NOT GIVEN                                 NOT GIVEN                                 NOT GIVEN
105 01  NAPOOPOO                                  NAPOOPOO                                  NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA
156 01  00059072                                  00059072                                  00059072
299 01  N                                         N                                         N
400 01  PP                                        PP                                        PP
410 01  AS                                        AS                                        AS
500 01  M                                         M                                         M
516 01  F                                         F                                         F
555 01  X                                         X                                         X
560 01  X                                         A                                         X
565 01  X                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 008 13                             09 404 008 13                             09 404 008 13
999 01  P02891650                                 P02891660                                 P02891670

SERIAL  00289168 ******************************  00289169 ******************************  00289170 ******************************
002 01  P0289168                                  P0289169                                  P0289170
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
104 01  NOT GIVEN                                 NOT GIVEN                                 NOT GIVEN
105 01  NAPOOPOO                                  NAPOOPOO                                  NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA
156 01  00059072                                  00059072                                  00059072
299 01  N                                         N                                         N
400 01  PP                                        LPP                                       LP
410 01  AS                                        AS                                        AS
500 01  C                                         C                                         M
516 01  U                                         U                                         U
555 01  X                                         X                                         X
560 01  X                                         X                                         X
565 01  X                                         X                                         X
570 01  * * * * *                                 * * * * *                                 * * * * *
575 01  * * * * *                                 * * * * *                                 * * * * *
920 01  09 404 008 13                             09 404 008 13                             09 404 008 13
999 01  P02891680                                 P02891690                                 P02891700

SERIAL  00289171 ******************************  00289172 ******************************  00289173 ******************************
002 01  P0289171                                  P0289172                                  P0289173
100 01  U.S.A.                                    U.S.A.                                    U.S.A.
102 01  HAWAII                                    HAWAII                                    HAWAII
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P:  017 ....2....V....3....V....4....V....5....V  "HAWAII STATE INVENTORY"
03/02/90....6....V....7....V....                   ....2....V....3....V....4....V....5....V  ....2....V....3....V....4....V....5....V
                                                   ....6....V....7....V....                  ....6....V....7....V....

104 01  NOT GIVEN                                  NOT GIVEN                                 NOT GIVEN
105 01  NAPOOPOO                                   NAPOOPOO                                  NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                   CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA
156 01  00059072                                   00059072                                  00059072
299 01  N                                          N                                         N
400 01  PP                                         PP                                        PP
410 01  AS                                         AS                                        AS
500 01  M                                          M                                         M
516 01  M                                          F                                         F
555 01  X                                          X                                         X
560 01  X                                          X                                         X
565 01  X                                          X                                         X
570 01  * * * * *                                  * * * * *                                 * * * * *
575 01  * * * * *                                  * * * * *                                 * * * * *
920 01  09 404 008 13                              09 404 008 13                             09 404 008 13
999 01  P02891710                                  P02891720                                 P02891730

SERIAL  00289174 ******************************    00289175 ******************************   00289176 ******************************
002 01  P0289174                                   P0289175                                  P0289176
100 01  U.S.A.                                     U.S.A.                                    U.S.A.
102 01  HAWAII                                     HAWAII                                    HAWAII
104 01  NOT GIVEN                                  NOT GIVEN                                 NOT GIVEN
105 01  NAPOOPOO                                   NAPOOPOO                                  NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                   CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA
156 01  00059072                                   00059072                                  00059072
299 01  N                                          N                                         N
400 01  LPP                                        LPP                                       LP
410 01  AS                                         AS                                        AS
500 01  M                                          C                                         C
516 01  U                                          U                                         U
555 01  X                                          X                                         X
560 01  X                                          X                                         X
565 01  X                                          X                                         X
570 01  * * * * *                                  * * * * *                                 * * * * *
575 01  * * * * *                                  * * * * *                                 * * * * *
920 01  09 404 008 13                              09 404 008 13                             09 404 008 13
999 01  P02891740                                  P02891750                                 P02891760

SERIAL  00289177 ******************************    00289178 ******************************   00289179 ******************************
002 01  P0289177                                   P0289178                                  P0289179
100 01  U.S.A.                                     U.S.A.                                    U.S.A.
102 01  HAWAII                                     HAWAII                                    HAWAII
104 01  NOT GIVEN                                  NOT GIVEN                                 NOT GIVEN
105 01  NAPOOPOO                                   NAPOOPOO                                  NAPOOPOO
106 01  CAVE IN CLIFF FACING SEA                   CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA
156 01  00059072                                   00059072                                  00059072
299 01  N                                          N                                         N
400 01  LPP                                        LP                                        LP
410 01  AS                                         AS                                        AS
500 01  C                                          C                                         M
516 01  U                                          U                                         U
555 01  X                                          X                                         X
560 01  X                                          X                                         X
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                                                   "HAWAII STATE INVENTORY"
P:  018 ....2....V....3....V....4....V....5....V   ....2....V....3....V....4....V....5....V   ....2....V....3....V....4....V....5....V
03/02/90....6....V....7....V....                   ....6....V....7....V....                   ....6....V....7....V....

565 01   X                                         X                                          X
570 01   * * * * *                                 * * * * *                                  * * * * *
575 01   * * * * *                                 * * * * *                                  * * * * *
920 01   09 404 008 13                             09 404 008 13                              09 404 008 13
999 01   P02891770                                 P02891780                                  P02891790

SERIAL   00289180 ******************************** 00289181 ********************************  00289182 ********************************
002 01   P0289180                                  P0289181                                   P0289182
100 01   U.S.A.                                    U.S.A.                                     U.S.A.
102 01   HAWAII                                    HAWAII                                     HAWAII
104 01   NOT GIVEN                                 NOT GIVEN                                  NOT GIVEN
105 01   NAPOOPOO                                  NAPOOPOO                                   NAPOOPOO
106 01   CAVE IN CLIFF FACING SEA                  CAVE IN CLIFF FACING SEA                   CAVE IN CLIFF FACING SEA
156 01   00059072                                  00059072                                   00059072
299 01   N                                         N                                          N
400 01   LPP                                       LPP                                        LPP
410 01   AS                                        AS                                         AS
500 01   M                                         M                                          M
516 01   U                                         U                                          U
555 01   X                                         X                                          X
560 01   X                                         X                                          X
565 01   X                                         X                                          X
570 01   * * * * *                                 * * * * *                                  * * * * *
575 01   * * * * *                                 * * * * *                                  * * * * *
920 01   09 404 008 13                             09 404 008 13                              09 404 008 13
999 01   P02891800                                 P02891810                                  P02891820

SERIAL   00331251 ******************************** 00331252 ********************************  00331253 ********************************
002 01   P0331251                                  P0331252                                   P0331253
100 01   U.S.A.                                    U.S.A.                                     U.S.A.
102 01   HAWAII                                    HAWAII                                     HAWAII
104 01   KAU DISTRICT, HAWAII ISLAND               KAU DISTRICT, HAWAII ISLAND                KAU DISTRICT, HAWAII ISLAND
105 01   RED HILL (NEAR)                           HILEA (1 MI. NORTHWEST OF)                 HILEA (1 MI. NORTHWEST OF)
106 01   CREVICE IN LAVA FLOW                      LAVA FLOW CAVE NO. 1                       LAVA FLOW CAVE NO. 2
156 01   00091751                                  00091751                                   00091751
299 01   N                                         N                                          N
400 01   S                                         S                                          S
    02                                             M
410 01   AS                                        AS                                         AS
412 01   HAWAIIAN                                  HAWAIIAN
500 01   M                                         M                                          M
516 01   M                                         F                                          F
555 01   X                                         X                                          X
560 01   X                                         X                                          X
565 01   X                                         X                                          X
570 01   * * * * 0                                 * * * * *                                  * * * * *
575 01   * * * * *                                 * * * * *                                  * * * * *
920 01   09 404 008 14                             09 404 008 14                              09 404 008 14
999 01   P03312510                                 P03312520                                  P03312530

SERIAL   00331254 ******************************** 00331255 ********************************  00331256 ********************************
002 01   P0331254                                  P0331255                                   P0331256
100 01   U.S.A.                                    U.S.A.                                     U.S.A.
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102 01  HAWAII                               HAWAII                               HAWAII
104 01  KAU DISTRICT, HAWAII ISLAND          KAU DISTRICT, HAWAII ISLAND          KAU DISTRICT, HAWAII ISLAND
105 01  HILEA (1 MI. NORTHWEST OF)            HILEA (1 MI. NORTHWEST OF)           HILEA (1 MI. NORTHWEST OF)
106 01  LAVA FLOW CAVE NO. 2                 LAVA FLOW CAVE NO. 2                 LAVA FLOW CAVE NO. 2
156 01  00091751                             00091751                             00091751
299 01  N                                    N                                    N
400 01  M                                    M                                    M
410 01  AS                                   AS                                   AS
500 01  M                                    M                                    M
516 01  F                                    F                                    F
555 01  X                                    C                                    C
560 01  X                                    X                                    X
565 01  X                                    X                                    X
570 01  * * * * *                            * * * * *                            * * * * *
575 01  * * * * *                            * * * * *                            * * * * *
920 01  09 404 008 14                        09 404 008 14                        09 404 008 14
999 01  P03312540                            P03312550                            P03312560

SERIAL  00331257 ******************************  00331258 ******************************  00331259 ******************************
002 01  P0331257                             P0331258                             P0331259
100 01  U.S.A.                               U.S.A.                               U.S.A.
102 01  HAWAII                               HAWAII                               HAWAII
104 01  KAU DISTRICT, HAWAII ISLAND          KAU DISTRICT, HAWAII ISLAND          KAU DISTRICT, HAWAII ISLAND
105 01  HILEA (1 MI. NORTHWEST OF)            HILEA (1 MI. NORTHWEST OF)           HILEA (1 MI. NORTHWEST OF)
106 01  LAVA FLOW CAVE NO. 2                 LAVA FLOW CAVE NO. 2                 LAVA FLOW CAVE NO. 2
156 01  00091751                             00091751                             00091751
299 01  N                                    N                                    N
400 01  M                                    M                                    M
410 01  AS                                   AS                                   AS
500 01  M                                    M                                    M
516 01  M                                    U                                    F
555 01  X                                    X                                    X
560 01  X                                    X                                    X
565 01  X                                    X                                    X
570 01  * * * * *                            * * * * *                            * * * * *
575 01  * * * * *                            * * * * *                            * * * * *
920 01  09 404 008 14                        09 404 008 14                        09 404 008 14
999 01  P03312570                            P03312580                            P03312590

SERIAL  00339707 ******************************  00382090 ******************************  00382091 ******************************
002 01  P0339707                             P0382090                             P0382091
100 01  U.S.A.                               U.S.A.                               U.S.A.
102 01  HAWAII                               HAWAII                               HAWAII
104 01  OAHU ISLAND                          OAHU ISLAND                          OAHU ISLAND
105 01                                       BELLOWS A.F.S.                       BELLOWS A.F.S.
106 01                                       PICNIC AREA NO. 5                    PICNIC AREA NO. 5
156 01  00099474                             00280411                             00280411
299 01  N                                    N                                    N
400 01  S                                    P                                    S
    02                                                                            PP
410 01  AS                                   AS                                   AS
412 01                                       PRE-COLONIAL HAWAIIAN                PRE-COLONIAL HAWAIIAN
500 01  M                                    M                                    A
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                                                                  SELGEM SELLS2 STATISTICS
TOTAL RECORDS PROCESSED   120
TOTAL LINES PROCESSED    2970
TOTAL LINES EXCLUDED      247
TOTAL LINES PRINTED      2723

                         SUMMATION OF SELGEM CATEGORIES PRINTED

002...   120  100...   120  102...   120  104...   120  105...    72  106...   119  156...   120
158...    64  160...    64  161...    64  162...    64  205...    64  206...    58  207...    10
299...   120  400...   163  410...   120  412...    28  500...   120  516...   120  555...   130
560...   122  565...   120  570...   120  575...   120  640...    13  920...   127  921...    01
999...   120
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HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

May 23, 1990

Dr. Donald J. Ortner, Chairman
Department of Anthropology
National Museum of Natural History
NHB 223 Smithsonian Institution
Washington, D.C. 20560

Re: Native Hawaiian Human Remains and Funerary Objects in the Possession and Control of the Smithsonian Institution's National Museum of Natural History

Dear Dr. Ortner:

Aloha. I am Edward L. Kanahele, President of the nationally and locally recognized grass-roots organization Hui Malama I Na Kupuna o Hawai'i Nei. Our organization is made up of community level Native Hawaiians who have accepted the historic responsibility of caring for the human remains and funerary objects of their kupuna (ancestors). We are identified in the National Museum of the American Indian Act, (20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(2), P.L. 101-185, November 28, 1989), as having expertise in cultural matters, particularly burials. In addition, our organization is also recognized in the recently passed State of Hawai'i House Bill 3296, in which our members drafted the legislation, testified in support, negotiated all problem areas with the opposition and secured its passage by a unanimous vote of both houses. The new state law provides for the protection of prehistoric unmarked Native Hawaiian burial sites. Governor John Waihe'e will schedule a signing ceremony sometime in June.

With respect to the Native Hawaiian human remains and funerary objects in the present possession and control of the Smithsonian Institute, pursuant to 20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(1), the Secretary of the Smithsonian is mandated (1) to inventory the Native Hawaiian human remains and funerary objects in the possession of the Smithsonian; (2) enter into an agreement with appropriate Native Hawaiian organization that provides for the return of such human remains and funerary objects; and (3) apply where applicable, the procedures regarding Indian human remains and funerary objects to the Native Hawaiian remains and objects. Particularly, if the tribal origin of any Indian human remains or funerary object is identified by a preponderance of the evidence, the Secretary [of the Smithsonian] shall so notify the affected tribe at the earliest convenience.

20 U.S.C. 80q § 9(b). Upon the request of the tribe, the Secretary shall expeditiously return such remains (together with any associated funerary objects. 20 U.S.C. 80q §9(c).

The main purpose for the identification procedure in the Museum Act is to determine the cultural affiliation between the native human remains and the present day cultural group and where applicable, lineal descendants in order to facilitate repatriation. Hence, as related to human remains disinterred from the Hawaiian Islands, the identification process should not pose an obstacle since the only prehistoric native people in Hawai'i since time immemorial are ka po'e Hawai'i (Native Hawaiians). Whereupon any human remains are identified as being from Hawai'i, unlike human remains from Arizona, New Mexico or Oklahoma, native identity is self-evident. Following the visit of various members of Hui Malama I Na Kupuna o Hawai'i Nei, including myself and most recently Mr. Edward Halealoha Ayau, to the anthropology section of the National Museum of Natural History, we noticed that the wooden drawers in which human remains were kept were identified by geographical area. Of particular interest to us were the drawers marked, "Hawaii." These drawers we were told contained the collection of Native Hawaiians. As such, the identification process envisioned by the Museum Act is satisfied. Therefore, pursuant to the provisions of the Museum Act, Hui Malama I Na Kupuna o Hawai'i Nei should have been notified. 20 U.S.C. 80q § 11(a)(3); § 9(b). Moreover, upon the request of Hui Malama I Na Kupuna o Hawai'i Nei, the Secretary of the Smithsonian "shall expeditiously return such remains (together with any associated funerary objects)." 20 U.S.C. 80q § 11(a)(3); § 9(c).

We have an inventory provided by your staff which identifies 120 individuals in the present possession and control of the Smithsonian. However, we have information provided by Dr. Michael Pietrusewsky of the University of Hawai'i Anthropology Department, who has conducted extensive studies on the same Native Hawaiian collection that identifies 214 remains. I believe that information was telefaxed to you May 21, 1990 along with a letter dated December 6, 1989 that I transmitted to Secretary Robert Adams requesting Hui Malama I Na Kupuna o Hawai'i Nei be notified of the completion of the inventory. I understand Mr. Ayau has requested your staff follow up on the discrepancy of 94 missing individuals from the computer printout provided. I hereby concur and renew that request and look forward to your prompt attention to that matter.

May 23, 1990

I am dismayed and troubled, as is the membership, of the news that the na iwi (bones) of our kupuna (ancestors) are being studied. We deem such acts deplorable for being totally contradictory to our traditional customs and beliefs regarding the protection and aloha (love) we have for our ancestors. In short, study of the remains of dead Native Hawaiians, in the eyes of living Native Hawaiians, amounts to desecration. Our organization was formed to prevent the further insensitive treatment of our kupuna. We formally object to any past study of the remains of Native Hawaiians and demand that as a condition of the return agreement, the prohibition of further study of all Native Hawaiian human remains in the possession and control of the Smithsonian Institution, National Museum of Natural History. We hope that in the spirit of cooperation, the spiritual needs of Native Hawaiians are honored and respected until such time that we can bring our people home. I am transmitting a copy of this letter to the Honorable Senator Daniel K. Inouye who sponsored the Museum Act and presently leads the unprecedented movement to repatriate Native American human remains and funerary objects, sacred objects, and items of cultural patrimony. I am aware of the competing Smithsonian policy of allowing study, nonetheless, I believe this prohibition will not hinder the needs of science, since I am told that the Native Hawaiian remains are not being studied extensively at present.

On behalf of Hui Malama I Na Kupuna o Hawai'i Nei and pursuant to the Museum Act, I formally request the remains of all Native Hawaiians and any funerary objects be made available to Malama I Na Kupuna o Hawai'i Nei for repatriation to Hawai'i. The Museum Act only requires that an agreement that provides for the return of Native Hawaiian remains and funerary objects be entered into. Therefore, pursuant to 20 U.S.C. 80q § 11(a)(2), the only agreement that need be reached between the parties is the time and manner in which the Native Hawaiian human remains and funerary objects are to change hands. The rest is up to Hui Malama I Na Kupuna o Hawai'i Nei to determine.

I hope this matter can be worked out as expeditiously as possible. We pray for the safety and protection of our kupuna and that you honor our centuries old customs and beliefs. If there are any questions please feel free to contact myself or Edward Halealoha Ayau. Hui Malama stands committed to rectify this matter and protect the sanctity of dead Native Hawaiian ancestors.

Sincerely,

Edward L. Kanahele
President

cc: Honorable Senator Daniel K. Inouye
Honorable Senator Daniel K. Akaka
Secretary Robert Adams,
Smithonian Institute
Trustee Frenchy Desoto,
Office of Hawaiian Affairs

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

May 24, 1990

Dr. Donald J. Ortner
Department of Anthropology
National Museum of Natural History
NHB 223 Smithsonian Institution
Washington, D.C. 20560

Re: Return Agreement Regarding 214 Native Hawaiian Skeletal Remains and Funerary Objects in the Present Possession and Control of the Smithsonian Institute

Dear Dr. Ortner:

Aloha. This follows up on our missive dated May 23, 1990 to further explore issues that Hui Malama I Na Kupuna o Hawai'i Nei and the Smithsonian Institute should resolve in order to enter into the return agreement required by 20 U.S.C. 80q § 11(a)(2). As we stated in our previous letter, Hui Malama I Na Kupuna o Hawai'i Nei takes the position that the only issues to be resolved regarding return of the Native Hawaiian na iwi (bones) and funerary objects, is the time and manner in which such remains and objects are to be obtained by Hui Malama I Na Kupuna o Hawai'i Nei. As a result, we feel the following issues require careful thought, consideration and resolution:

1. The date that the remains and objects will be obtained;
2. Whether the Smithsonian is amendable to the conduct of traditional ceremonies at the Museum before, during and after the remains and objects are properly prepared for transport?
3. Whether the Smithsonian is agreeable to allowing members of Hui Malama I Na Kupuna o Hawai'i Nei access to the remains and objects at night?
4. Whether the Smithsonian is agreeable to minimizing the presence of non-Native Hawaiians by restricting access to the third floor while the ceremonies and preparation activities re going on and until such are completed and the entourage has left?
5. Whether the Smithsonian is agreeable to placing locks on the wooden drawers marked "Hawaii" containing the human remains of Native Hawaiians until such time as the date of transfer is determined?

Page Two
Letter to Dr. Ortner

Again, Hui Malama I Na Kupuna o Hawai'i Nei seek expeditious resolution to the long standing and debilitating problem of repatriating its family members home to Hawai'i. We continue to pray for their protection. We thank you in advance for your attention to this most important matter. Please feel free to contact myself (808) 959-9832 (R) or (808) 933-3421 (B) or Edward Halealoha Ayau (808) 521-2302 (B) or (808) 531-8022 (R).

Sincerely,

E. H. Ayau for

Edward L. Kanahele
President

cc: Honorable Senator Daniel K. Inouye
Honorable Senator Daniel K. Akaka
Secretary Robert Adams,
  Smithsonian Institute
Trustee Frenchy Desoto,
  Office of Hawaiian Affairs

HUI MALAMA I NA KUPUNA O HAWAI'I NEI
P.O. Box 5134 \ Hilo, Hawai'i 96720

May 23, 1990

Honorable Secretary Manuel Lujan
United States Department of Interior
Office of the Secretary
Main Interior Bldg.
1849 C Street NW
Washington, D.C. 20240

Re: Grants by the Secretary of Interior to Assist With the Repatriation of Native Human Remains Pursuant to the National Museum of the American Indian Act

Dear Secretary Lujan:

Aloha. I am Edward L. Kanahele, President of the nationally and locally recognized grass-roots organization Hui Malama I Na Kupuna o Hawai'i Nei. Our organization is made up of community level Native Hawaiians who have accepted the historic responsibility of caring for the human remains and funerary objects of their kupuna (ancestors). We are identified in the National Museum of the American Indian Act, (20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(2), P.L. 101-185, November 28, 1989), as having expertise in cultural matters, particularly burials. In addition, our organization is also recognized in the recently passed State of Hawai'i House Bill 3296, in which our members drafted the legislation, testified in support, negotiated all problem areas with the opposition and secured its passage by a unanimous vote of both houses. The new state law provides for the protection of prehistoric unmarked Native Hawaiian burial sites. Governor John Waihe'e will schedule a signing ceremony sometime in June.

With respect to the Native Hawaiian human remains and funerary objects in the present possession and control of the Smithsonian Institute, pursuant to 20 U.S.C. 80q § 11(a)(2), 103 Stat. 1346 § 13(a)(1), the Secretary of the Smithsonian is mandated (1) to inventory the Native Hawaiian human remains and funerary objects in the possession of the Smithsonian; (2) enter into an agreement with appropriate Native Hawaiian organization that provides for the return of such human remains and funerary objects; and (3) apply where applicable, the procedures regarding Indian human remains and funerary objects to the Native Hawaiian remains and objects. If the tribal origin of any Indian human remains or funerary object is identified by a preponderance of the evidence, the Secretary [of the Smithsonian] shall so notify the affected tribe at the earliest convenience. 20 U.S.C. 80q

§ 9(b). Upon the request of the tribe, the Secretary shall expeditiously return such remains (together with any associated funerary objects). 20 U.S.C. 80q § 9(c).

The main purpose for the identification procedure in the Museum Act is to determine the cultural affiliation between the native human remains and the present day cultural group and where applicable, lineal descendants in order to facilitate repatriation. Hence, as related to human remains disinterred from the Hawaiian Islands, the identification process does not pose an obstacle since the only prehistoric native people in Hawai'i since time immemorial are ka po'e Hawai'i (Native Hawaiians). Whereupon any human remains are identified as being from Hawai'i, unlike human remains from Arizona, New Mexico or Oklahoma, native identity is self-evident. Following the visit of various members of Hui Malama I Na Kupuna o Hawai'i Nei, including myself and most recently Mr. Edward Halealoha Ayau, to the anthropology section of the National Museum of Natural History, we noticed that the wooden drawers in which human remains were kept were identified by geographical area. Of particular interest to us were the drawers marked, "Hawaii." These drawers we were told contained the collection of Native Hawaiians. As such, the identification process envisioned by the Museum Act is satisfied.

Hui Malama I Na Kupuna o Hawai'i Nei has an inventory provided by Dr. Donald J. Ortner, Chairman of the Anthropology Department at the National Museum of Natural History which identifies 120 individuals in the present possession and control of the Smithsonian. The document is enclosed for your review. However, we have information provided by Dr. Michael Pietrusewsky of the University of Hawai'i Anthropology Department, who conducted extensive studies on the same Native Hawaiian collection that identifies 214 remains. A copy of that letter is also enclosed. Hui Malama I Na Kupuna o Hawai'i Nei requested the Smithsonian staff follow up on the discrepancy of 94 missing individuals from the computer printout provided. Since the human remains are already marked as being from Hawai'i, follow-up is not expected to take long. Dr. Ortner has promised expediency is resolving this discrepancy. Hui Malama I Na Kupuna o Hawai'i Nei transmitted a letter to Smithsonian Secretary Robert Adams requesting Hui Malama I Na Kupuna o Hawai'i Nei be notified of the completion of the inventory. A copy of that letter is also enclosed.

Therefore, pursuant to the provisions of the Museum Act, (20 U.S.C. 80q § 12(a)(1)), Hui Malama I Na Kupuna o Hawai'i Nei hereby requests a grant of $15,000 to implement the repatriation of 214 Native Hawaiian human remains from the National Museum of

May 23, 1990

Natural History back to Hawai'i, including the costs of:

1. Transportation for 5 members of Hui Malama I Na Kupuna o Hawai'i Nei to Washington D.C. to prepare the 214 human remains and any funerary objects for transit;
2. Transportation of the 214 remains from the National Museum of Natural History to the airline carrier;
3. Transportation of the 5 individuals and 214 remains to Hawai'i.
4. Acquiring lands for the reinterment of 214 remains and funerary objects.

It is our sincere hope that this matter can be worked out as expeditiously as possible. We pray for the safety and protection of our kupuna and that you honor our centuries old customs and beliefs. If there are any questions or if further follow-up documentation is required to secure the requested funding, please feel free to contact myself (808) 959-9832 or (808) 933-3421 or Edward Halealoha Ayau (808) 521-2302 or (808) 531-8022. I thank you in advance for your expeditious attention to this matter. We wish to bring our family home and put them back to sleep. It has been far too long that they ahve been away from Hawai'i Nei. Hui Malama stands committed to rectify this matter and protect the sanctity of dead Native Hawaiian ancestors.

Sincerely,

Edward L. Kanahele
President

Encl.

cc: Honorable Senator Daniel K. Inouye
Honorable Senator Daniel K. Akaka
Secretary Robert Adams,
Smithsonian Institute
Trustee Frenchy Desoto,
Office of Hawaiian Affairs

A3 MONEY C6
Olomana dispute D2
Obituaries D2

Hawaii

MONDAY, May 7, 1990
The Honolulu Advertiser

Hawaiian remains laid back to rest

Final rites for 1,000 Maui reburials

By Edwin Tanji
Advertiser Maui County Bureau

HONOKAHUA, Maui – With chants, prayers and laying of ho'okupu (gifts), the bones of nearly 1,000 ancient Hawaiians reburied in a Honokahua sand dune were bid aloha yesterday and promised that they would not be disturbed again.

The ceremony involving Hawaiians from around the state closed a chapter in a conflict that created a new consciousness and new protections for ancient Hawaiian burials throughout Hawaii.

The ceremony included Colin Cameron, chief executive of the Maui Land & Pineapple Co. and the Kapalua Land Co. that was the key player in the controversy that erupted over Hawaiian burials. Kapalua's plans for a new hotel led to the excavation of the sand dune overlooking Honokahua Bay.

"I apologize to the bones for having disturbed them," Cameron said.

Cameron and Dana Naone Hall of Hui Alanui O Makena

cavation had a long-term benefit for Hawaiian culture. The controversy over the Honokahua excavation led to a new state law to protect ancient burials from excavation.

"Now all the people here can rest in peace. The kupuna are put back to rest," Naone Hall said.

"Without all this, we wouldn't have the legislation that was passed this session. Without this, there would have been no impetus for that to happen. It had to be something dramatic, something important to create awareness," she said.

It started when the Maui Planning Commission approved a permit for a 450-room hotel on the Honokahua sand dune, although surveys suggested there were significant archaeological sites and burials on the 13.6-acre parcel.

After Hui Alanui O Makena objected, the planning commission added a condition that Kapalua negotiate with the Office of Hawaiian Affairs and the hui on preservation of archaeological sites and excavation of the burials.

tember 1987. As more and more burials were uncovered, it became clear that the sand dune was a major burial ground.

In November 1988, Kapalua disclosed that nearly 800 burials were uncovered. Hawaiians and non-Hawaiians alike protested the desecration of the burials. Cameron stopped the work to negotiate with the state, county and Hawaiians on the fate of the property.

The state paid $5.5 million for a perpetual easement over the sand dune and $500,000 more for Kapalua to rebury the bones that had been removed.

Kapalua agreed to move its proposed Ritz-Carlton hotel to a new site. Maui County approved the new hotel site and plans for the reburial and landscaping of the burial grounds.

The reburial was kept under a cloak of ancient tradition. Ancient Hawaiians did not mark graves to protect the remains of their loved ones from desecration.

Women volunteers instructed by Puanani Van Dorpe made 1,000 pieces of black *kapa* bark

Advertiser photo by Ed Yary

Lenani Sakamoto, left, and Leahi Naole Hall place a flower offering at the reburial site. At far left, looking on, is Office of Hawaiian Affairs Trustee Manu Kahaialii.

men, headed by Leslie Kuloloio of Hui Alanui O Makena and guided by archaeologist Theresa Donham, reburied each bundle in the same area of the dune from which it had been taken.

"Everything went back. Personal goods, artifacts, everything that was with them went back with the

The work was done at night, he said, "to follow the ancient ways, to put them back in a peaceful, calm, spiritual time with no disturbances." The reburial work took two months to complete.

With the bones back in the sand, work will now start on landscaping the site, removing

plants, Naone Hall said.

Promising the bones "will never again be disturbed," Cameron said Honokahua now "will make a bridge between the Hawaiians of the past and the Hawaiians today."

"It will also be a bridge between all of us here today. I think we were all working to-

[illegible]
Anatomical Section
Received April 25th, 1874.

Mobile 19 April 74

My dear Dalton

When I parted with you a month ago, I told you I would send you "a Skull," and I now comply – for I send by Express to you – a *present* of the Skull of a "Sandwich Islander." It is genuine – for "*I knew him well*" attended him in his last illness, and made his head responsible for his medical bill – It has now served my purpose, and I turn it over to you to be placed among the records of the mighty – dead, and to fill, if not a niche in the temple of fame, what is better – a place in your out coming work on

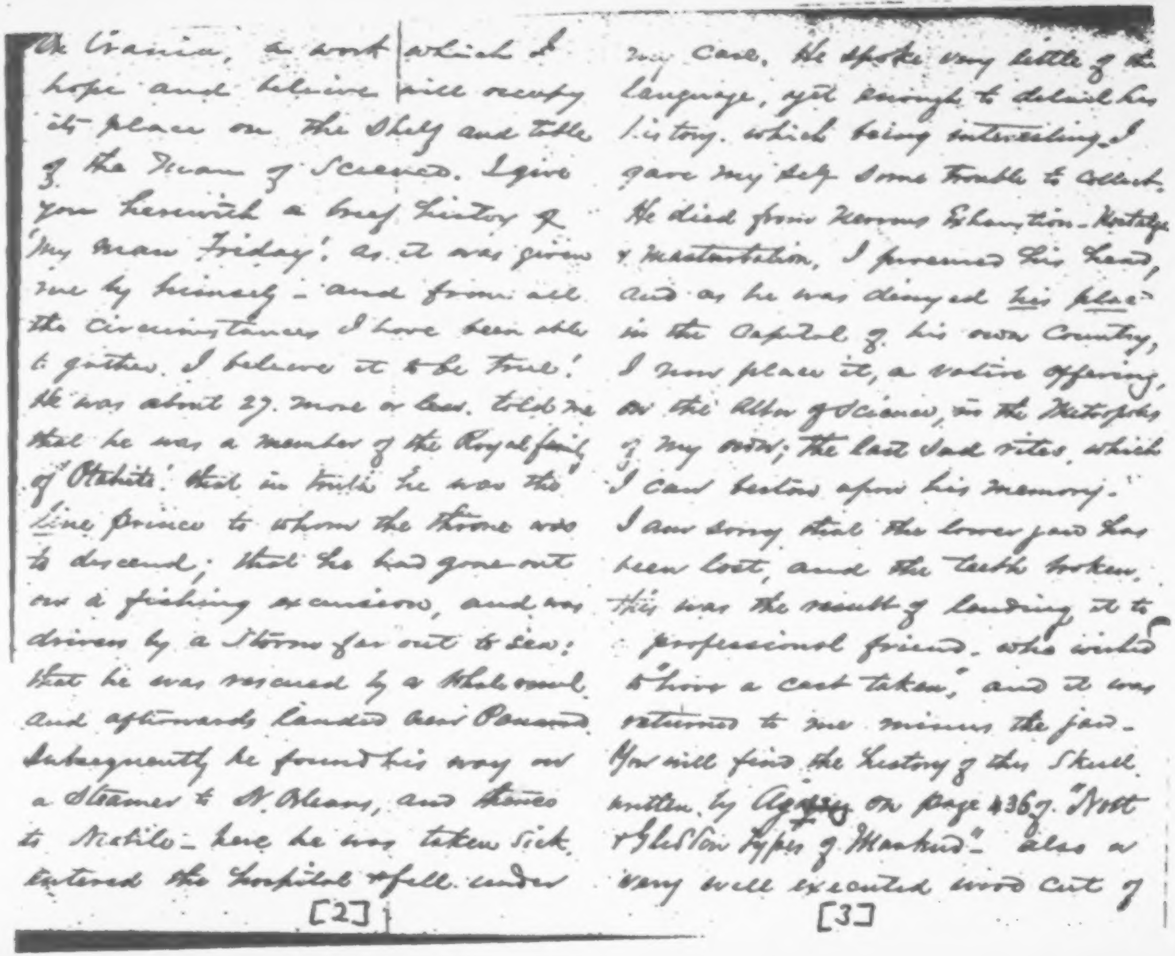
[1]

the Skull – here you will be able to secure the 'facial Angle' &c.

He informed me that it was a habit of *his family* to flatten the occiput in infantile life, by compression made with the bark of some particular tree. He said this was not peculiar to *the* tribe but only to the family of the Prince from whom he came: and then only with the male children – I give you this for what it is worth – such was his statement to me; if true it may be a point of interest to you. *Please accept* this as a *testimonial* of my interest in your work; and as a feeble evidence of my appreciation of yourself & your valuable services in the path of the profession which I love to follow –

I am truly
C. N. Martin.

[4]



on Crania, a work which I
hope and believe will occupy
its place on the Shelf and table
of the Man of Science. I give
you herewith a brief history of
'My man Friday', as it was given
me by himself - and from all
the circumstances I have been able
to gather, I believe it to be true!
He was about 27. more or less. told me
that he was a member of the Royal family
of "Otaheite" that in truth he was the
Line prince to whom the throne was
to descend; that he had gone out
on a fishing excursion, and was
driven by a Storm far out to sea:
that he was rescued by a Whaleman
and afterwards landed near Panama.
Subsequently he found his way on
a Steamer to N. Orleans, and thence
to Mobile - here he was taken sick.
entered the hospital & fell under

[2]

my care. He spoke very little of the
language, yet enough to detail his
history. which being interesting, I
gave my self some trouble to collect.
He died from Nervous Exhaustion - Nostalgia
& Masturbation, I procured his head,
and as he was denied his place
in the Capitol of his own Country,
I now place it, a votive offering,
on the Altar of Science, in the Metropolis
of my own; the last sad rites, which
I can bestow upon his memory."
I am sorry that the lower jaw has
been lost, and the teeth broken,
this was the result of lending it to a
professional friend - who wished
to "have a cast taken," and it was
returned to me minus the jaw -
You will find the history of this Skull
written by Agassiz on page 436 of "Nott
& Gliddon Types of Mankind" - also a
very well executed wood cut of

[3]

A.M.M. No 1057
Anatomical Section
Recieved April 25, 1874
Molile 19 April 74

My dear Doctor,

When I parted with you a month ago, I told you I ~~wanted~~ would send you "a skull" and I now comply - for I send by Express to you - a present, the skull of a "Sandwich Islander": It is genuine - for "I knew him well". attended him in his last illness, and made his head responsible for his medical bill - It has now served my purpose, and I turn it over to you to be placed among the records of the mighty - dead, and to fill, if not a niche in the temple of fame, what is better - a place in your out coming work on Crania, a work which I hope and believe will occupy its place on the shelf and table of the Man of Science. I give you here with a brief history of my man Friday! as it was given me by himself - and from all the circumstances I have been able to gather. I believe it to be true! He was about 27 more or less. told me that he was a member of the Royal family of Otahiti! that in truth he was the line prince to whom the throne was to descend, That he had gone out on a fishing excursion, and was driven by a storm far out to sea: That he was rescued by a Whale (rescue?) and afterwards landed near Panama subsequently he found his way on a Steamer to N. Orleans, and thence to Molilo - here he was taken sick, entered the hospital + fell under my care. He spoke very little of the language, yet enough to deduce his history. which being interesting. I gave myself some trouble to collect. He died from nervous Exhaustion - Nostalgia + (masturbation?), I procured his head, and as he was denyed his place in the capital of his own Country, I now place it, a native offering, on the Alter of Science, in the Metropolis of my own; The last sad rites, which I can bestow upon his memory. I am sorry that the lower jaw has been lost, and the teeth broken. this was the result of lending it to professional friend, who wished to "have a cast taken"; and it was returned to me minus the jaw. You will find the history of the skull written by Agassy on page 436 of "Nort + Gidlow. Types of Mankind" - also in very well executed wood cut of the skull - here you will be able to secure the "facial Angle" etc.

He informed me that it was 'a habit of his family to flatten the ocuput in infantile life, by compression made with the bark of some particular tree. He said this was not peculior to the tribe but only to the family of the prince from whom he came. and then only with male children - I gave you this for what it is worth - such was his statement to me; if true it may be a ~~(?)~~ point of interest to you.

Please accept this as a testimonial of my interest in your work; and as a fisble evidence of my appreciation of sincerity to your valuable services in the path of the profession which I love to follow -

I am Truly,
C.H. Mastin

REPORT 71-8

HUMAN SKELETAL COLLECTIONS in the BISHOP MUSEUM

by

MICHAEL PIETRUSEWSKY

University of Hawaii

November 1971
Department of Anthropology
Bernice P. Bishop Museum
Honolulu, Hawaii

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Acknowledgements --

The author wishes to acknowledge support he received from the B. P. Bishop Museum and the University of Hawaii for work in physical anthropology at the Museum which included this evaluation. Special thanks are extended to Mrs. Judy Amesbury for her assistance in carrying out the inventory upon which this report is largely based. Peter Gilpin of Bishop Museum is responsible for the fine photographs of the skulls illustrated and for the printing of the other photographs which appear in this publication.

Aims

An inventory and evaluation of the human osteological collection of the B. P. Bishop Museum was initiated in the Fall of 1969 with the intention of making known to interested researchers the nature and extent of the collections. It is hoped that this undertaking will make clear the suitability of the assemblage for various research problems, allowing planning of future work. This is the most important objective of such an inventory. The report which follows presents the finding of this inventory of the human skeletal collections at the B. P. Bishop Museum with some comments on the kinds of studies they would be appropriate for.

Methods

The human skeletal material is kept in cardboard boxes (roughly 27" by 9 1/2" by 8") with lids and is shelved in one room at the museum. The boxes are stacked in metal shelving which reaches the height of 14 boxes, making necessary the use of a ladder to reach nearly half of the collection. Altogether, there are nearly 1000 of these individual boxes, and the catalogue entries exceed 3000. Each box contains anywhere from one complete skeleton to the remains of several individuals depending on their completeness with skulls and infracranial skeletons, when present, being placed in the same container.

Because of the size of the collection and its sometimes precarious placement, the overwhelming and ominous task of bringing each box down, carrying it to the front of the room, and opening it for the sole purpose of determining its contents was not attempted, although this would have yielded the best results. Instead, this inventory was based on the consecutive entries made in the human osteological catalogue kept at the Museum which was brought up-to-date in 1969 by R.N. Bowen. However, in the course of research by the author, between one-half and two-thirds of the collection has been studied in detail. For these, the correspondence between catalogue entries and what is actually present, is known.

Relying on catalogue descriptions has its limitations and is at times inexact, requiring checking. One difficulty is that an entry assigned an individual catalogue number does not necessarily represent a single individual. Some catalogue entries represent several individuals; others list crania (skulls without mandibles) separately, and the mandibles belonging to these have been entered under separate designations. Because of this, care was exercised to count individuals, not assemblages or parts of individual skeletons. Another difficulty in interpreting the catalogue is the lack of consistency in the use of such terms as "skull", "cranium", "calvarium", and "skull cap" in the descriptions of the material. For the most part, individual cataloguers were consistent with their usage of these terms, so that roughly the first twenty pages are standard for one terminology. There are followed by a different, but consistent, terminology for pages 20 through 167. Only in the last 25 pages of the catalogue (those recently appended by Bowen) is the proper and widely accepted usage of these terms followed. It is this terminology that is used in the paper and all different terms have been converted into the following categories:

skull - cranium and mandible
cranium - skull minus mandible
calvarium - cranium missing facial skeleton (*i.e.*, incomplete cranium)
calotte - skull cap
mandible - lower jaw
infracranial - skeleton below and not including the skull

When the catalogue was first conceived, and preceding the first entries, a number of guidelines were established which included assigning a catalogue number, recording the field number, accession number, a description of material, collector, date, locality, and any significant remarks. Unfortunately, these procedures were not always faithfully followed throughout the history of the catalogue so that some of the information is incomplete; often the name of the collector and where and when the remains were collected were omitted.✓ Some entries failed to give a specific island of origin, or exact locality on that island.✓ This has made necessary the listing of material under island groups with no specific locality headings such as the one which appears in the tables for the Hawaiian Islands. The missing information was in some cases established by reference to other records of acquisition kept by the Museum. The catalogue notations of rough age (i.e., adult or sub-adult) seems reasonably reliable and have been followed here.

A number of categories were established for both adult and sub-adult material covering all the major combinations of skeletal parts found. Individuals are entered under one of these categories and assigned to their appropriate island group, island, and where possible, districts and specific sites or localities within these larger areas. For purposes of this report, only 10 categories are use. These are based on the actual

Evaluation and Discussion

The inventory of the human skeletal collection in the B. P. Bishop Museum shows that its strength lies in representation of skeletal remains from Guam and Polynesia, particularly from the Hawaiian chain. The most outstanding series is that from Mokapu on the northeastern coast of Oahu, Hawaiian Islands. Although the provenance of the Mokapu burials is not secure*, absence of any indications of European contact allows them to be regarded as being prehistoric or pre-European, although probably late. An extensive account of the osteology of these skeletal remains exists at present only in manuscript form (Snow, ms.). This particular series has also been utilized by other researchers in broader and more inclusive works using mainly cranial measurements and some non-metrical traits ✓(Marshall & Snow, 1956; Marshall & Giles, ms.; Howells, ms.). Data collected from this series in addition to other Hawaiian cranial remains are currently being analyzed by the author.

Two other series whose archaeological provenance is perhaps better secured are those exhumed during excavations of the Hane Dune Site (MUH1), Uahuka, Marquesas and the Sand Dune Site (H-1), South Point, Ka'u, Hawaii. Unfortunately these two collections are of limited size and their state of preservation is generally not good.

As is often characteristic of museum collections of skeletal material, (Two cranial remains) far exceed infracranial remains. Fortunately this is not the case for the Mokapu series. Also, with the exceptions of the Mokapu remains, adult remains far outweigh the sub-adult remains for these collections.

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*Excavations of the Mokapu skeletal material were accomplished mainly between the years 1934 to 1957, involved many people, and in many instances suffered deficiencies in recording methods as a consequence.

Sizeable samples from other Hawaiian islands besides Oahu are included in the Museum's collection and thus the possibility exists for intra-population studies for Hawaii. More recent post-contact samples in addition to pre-contact samples from the Hawaiian Islands are also represented and perhaps they may permit investigations into temporal change.

As might be expected, previous research on these skeletal collections concentrated on the Mokapu and Guamanian series, as these are the largest. These studies, however, have for the most part focused only on cranial measurements of the adult material. The possibility exists then for similar work on the other parts of the collection, especially other Hawaiian remains, and the application of these kinds of data to multivariate analyses. In addition, consideration has yet to be made of the following research projects on the Museum's collections: non-metrical morphological features (discrete traits) of both cranial and infracranial remains for continued research in inter- and intra-populational variability; research involving the sub-adult material for growth studies; odontological research; palaeopathological studies; correlation of skeletal variation with environment, culture, and physiological data on living people; and studies in the morphogenesis of such traits as rocker jaw, septal aperture, tibial and talar squatting facets, vertebral anomalies, shovel-shaped incisors, and the agensis of the third molar, to mention only a few that are common in these Oceanic skeletal and dental remains.

In summary, the author has suggested a number of directions that research might take and wishes in this report to make better known some of the potentialities of this important collection from the Pacific in view of its extent and nature. The potentiality of the existing collection for future work is, to say the least, tremendous. MAY66 NOT

Description of collections

A description of skeletal remains from various islands and island groups are presented in this section following the format explained below:

CULTURE AREA (Polynesia, Micronesia, etc.)

Name of island group and locality: Island groupd, island, and in some cases district and/or site within the island are given.

Total number of individuals: Minimum number of individuals determined from skeletal remains however incomplete; adult and sub-adult representation indicated.

Skull/infracranial representation (adult): Number of complete skeletons, crania and/or skulls, mandibles, and partially complete infracranial skeletons.

Notable series: In most cases the largest assemblages within the larger collections for which catalogue designation, collector and date, archaeological provenance, if any, are given. Catalogue number designations were not given for isolated entries which constituted smaller and less significant samples.

Published reports: Published reports and manuscripts for particular series.

Sometimes the last two categories were omitted if the sample size was too small.

AUSTRALIA
(Table 1)

Island: Australia
Locality: Lachlan District and Murray River, Victoria
Total number of individuals: 2
Skull/infracranial representation: 1 mounted skeleton (Catalogue number 230) and 1 skull (Catalogue number 234).

MELANESIA
(Table 1)

Island: New Guinea
Locality: Unknown
Total number of individuals: 3 adult
Skull/infracranial representation: 3 skulls/crania

Island: New Hebrides
Locality: Malekula
Total number of individuals: 2
Skull/infracranial representation: 1 skull, 1 mounted skeleton.

Island group: Fiji
Island: Lau Islands, few from Vanua Levu and Viti Levu
Total number of individuals: 28 (22 adult, 6 subadult)
Skull/infracranial representation: 19 skulls, 3 partially complete infracranial skeletons.

Notable series:

1. Catalogue numbers 832-863. Collected by E. H. Bryan in 1924 at Burial Shelter, Thikombra-i-Lau.
2. Catalogue numbers 1251-1255. Collected by L. M. Thompson in 1934 from Lau Group.

MICRONESIA
(Table 1)

Island group: Marianas
Island: Guam
Total number of individuals: 311 (303 adult, 8 subadults)
Skull/infracranial representation: 18 complete skeletons, 165 crania/skulls, 44 mandibles, 195 incomplete skeletons.

Notable series:

1. Catalogue numbers 441-534. Collected in 1922 by T. C. Thompson.
2. Catalogue numbers 601-756. Collected in 1922 by H. G. Hornbostel from Epau.
3. Catalogue numbers 759-770. Collected in 1923 by H. G. Hornbostel from Agana.

Published reports: Series included in following publications: Marshall & Snow, 1956; Marshall & Giles, ms.; Howells, ms.; Wood-Jones, 1931b.

Island: Saipan
Locality: Agingan
Total number of individuals: 5 adult
Skull/infracranial representation: 5 skulls, no infracranial remains.

Island: Tinian
Localities: includes Taga
Total number of individuals: 29
Skull/infracranial representation: 12 skulls, 3 crania, 3 mandibles, 14 partially complete infracranial skeletons.

WESTERN POLYNESIA
(Table 2)

Island group: Tonga
Islands: Tongatapu, Vava'u
Total number of individuals: 17 (13 adult, 4 subadult)
Skull/infracranial representation: 1 complete skeleton, 8 skulls/crania, 1 mandible, 10 partially complete infracranial skeletons.
Notable series:
1. Catalogue numbers 430-440. Collected by W. C. McKern during excavations on the island of Tongatapu in 1920-21 as part of the Bayard-Dominick Expedition to Polynesia.
2. Catalogue numbers 1214-1217. Collected in 1931 by MacGregor on Vava'u.

Published reports: Marshall & Snow, 1956; Marshall & Giles, ms; Pietrusewsky, 1970.

Island group: Samoa
Island: Tutuila
Total number of individuals: 4 adult
Skull/infracranial representation: 4 skulls/crania

Island group: Line
Island: Fanning
Total number of individuals: 1
Skull/infracranial representation: Cranial and infracranial fragments of an adult.

Island group: Line
Island: Hull
Total number of individuals: 1 adult
Skull/infracranial representation: 1 skull.

EASTERN POLYNESIA
(Table 2)

Island group: Society
Islands: Tahiti, unspecified Society Islands
Total number of individuals: 42 (40 adult, 2 subadult)
Skull/infracranial representation: 7 complete skulls, 11 crania, 9 mandibles, 12 partially complete infracranial skeletons.
Notable series: 1. Catalogue numbers 921-926. Collected by K. P. Emory in 1926.
2. Catalogue numbers 219-224. Collected by K. P. Emory.
3. Catalogue numbers 929-932. Collected by K. P. Emory in 1926.

Island group: Tuamotu
Island: Makatea
Total number of individuals: 10 adult
Skull/infracranial representation: 6 crania, 10 mandibles, 1 partially complete infracranial skeleton.
Notable series: 1. Catalogue numbers 1175-1190. Collected by K. P. Emory in 1930 from maraes from the interior of island and cave burials.

Island group: Marquesas
Islands: Hivaoa, Uahuka, Uapou
Total number of individuals: 64 (46 adult, 18 subadult)
Skull/infracranial representation: 5 complete skeletons, 37 crania/skulls, 22 incomplete infracranial skeletons.
Notable series: 1. Catalogue numbers 2837-2851. Remains representative of 24 adults and 17 subadults exhumed during excavation of Hane Dune Site (MUH1), Uahuka in 1964 by Y. H. Sinoto.
2. Catalogue numbers 351-361b. Skeletal remains from various Marquesan islands collected by Ralph Linton during the Bayard-Dominick Expedition to Polynesia in 1920-21.

Island group: Gambier
Island: Mangareva
Total number of individuals: 8 (6 adult, 2 subadult)
Skull/infracranial representation: 1 skull, 5 crania.

MARGINAL POLYNESIA
(Tables 3, 4, 5, 6 and 7)

Island group: New Zealand (Table 3)
Locality: unknown
Total number of individuals: 3 adults
Skull/infracranial representation: 3 skulls

Island Group: Hawaiian*
Island: Hawaii (Table 3)
Districts: North Kohala, South Kohala, North Kona, South Kona, Hamakua, Puna, and Ka'u
Total number of individuals: 203 (160 adult, 43 subadult)
Skull/infracranial representation: 16 complete skeletons, 93 crania or skulls, 5 mandibles, 80 partially complete infracranial skeletons.
Notable series:
1. Catalogue numbers 1-34. Honaunau, South Kona District (just south of the City of Refuge). ✓
2. Catalogue numbers 1218-1250. Honomalino, South Kona District. Collected from cave burials by K. P. Emory ✓ in 1933 ✓
3. Catalogue numbers 2456-2552. Sand Dune Site (H-1), South Point, Kau District. Burials exhumed during excavations in 1954 by K. P. Emory, W. J. Bonk, and Y. H. Sinoto.

Published reports: Underwood, 1969.

Island group: Hawaiian
Island: Kauai (Table 4)
Districts: Kawaihau, Hanalei, Lihue, Koloa, Waimea
Total number of individuals: 76 (64 adult, 12 subadult)
Skull/infracranial representation: 6 complete skeletons, 38 skulls/crania, 11 mandibles, 14 partially complete infracranial skeletons.
Notable series:
1. Catalogue numbers 2320-2330. Wailua, Kawaihau District. Collected in 1949, includes five complete skeletons.

---

*Since this report was completed, a large collection was added from Anaehoomalu (Pietrusewsky, 1971). ✓

MARGINAL POLYNESIA
(continued)

Island group: Hawaiian
Island: Maui
Districts: Wailuku, Makawao, Hana
Total number of individuals: 59 (50 adult, 9 subadult)
Skull/infracranial representation: 4 complete skeletons, 17 crania/skulls, 16 partially complete infracranial skeletons.
Notable series: No single concentration of remains from one locality. No provenance.

Island group: Hawaiian
Island: Lanai (Table 5)
Districts: Lahaina
Total number of individuals: 226 (217 adult, 9 subadult)
Skull/infracranial representation: 79 complete skulls/crania, 30 mandibles, 91 partially complete infracranial skeletons.
Notable series:
1. Catalogue numbers 70-153. No specific locality. Collected by vonLuschan, Stokes, and Munroe includes 60 skulls (30 complete) and a few infracranial remains.
2. Catalogue numbers 235-348. North Coast. Collected by Sullivan and Munroe includes 28 skulls/crania and 68 partially complete infracranial skeletons.

Island group: Hawaiian
Island: Kahoolawe (Table 5)
Total number of individuals: 7 (2 adult, 5 subadult)
Skull/infracranial representation: 2 complete skulls/crania, 1 mandible, 4 partially complete infracranial skeletons.

Island group: Hawaiian
Island: Molokai (Table 6)
District: Molokai
Total number of individuals: 46✓ (42 adult, 4 subadult)
Skull/infracranial representation: 1 complete skeleton, 36 skulls/crania, 5 mandibles.
Notable series:
1. Catalogue numbers 392-416A. West End, Molokai District, "from windswept sands" collected by Danforth and Emory in 1922.✓

MARGINAL POLYNESIA
(continued)

Island group: Hawaiian
Island: Necker Island (Table 6)
Total number of individuals: 1 partially complete infracranial skeleton.

Island group: Hawaiian
Island: Nihoa (Table 6)
Total number of individuals: 11 (9 adult, 2 subadult)
Skull/infracranial representation: 8 fragmentary skull, 1 mandible, 9 partially complete infracranial skeletons.
Notable series: 1. Catalogue numbers 811-827. All remains entered as coming from East Face, Dog's Head. what yr. ?

Island group: Hawaiian
Island: Oahu (excluding Mokapu collection) (Table 7)
Districts: Honolulu, Koolaupoko, Ewa, Waianae, Koolauloa, Wailua
Total number of individuals: 773 (694 adult, 78 subadult)
Skull/infracranial representation: 70 complete skeletons, 188 complete skulls/crania, 99 mandibles, 93 incomplete skulls, 228 partially complete infracranial skeletons.
Notable series:
1. Honolulu District: Waikiki, Nuuanu Valley, Kahala, Wailupe, constitute the majority of the Oahu collection.
    a. Catalogue numbers 2903-2928.✓ Waialae Private Cemetery, Kahala. Includes 25 complete skeletons exhumed by R. N. Bowen and L. J. Soehren in 1966. Probably historical.
2. a. Waimanalo, Koolaupoko.✓ Many individual entries over the years.
    b. Catalogue numbers 2358-2412. Makawao Street, Kailua, Koolaupoko exhumed in 1952.
3. Catalogue numbers 2563-2604. Pupukea, Koolauloa. Burials exhumed in 1956 by Pierce and Sinoto.✓

Published reports: Wood-Jones, 1931a. ✓

MARGINAL POLYNESIA
(continued)

Island group: Hawaiian
Island: Oahu
District: Koolaupoko
Locality: Mokapu
Total number of individuals: 1504 (1171 adult, 333 subadult)

The collection of this very large and important skeletal series began in 1932 when the museum retrieved the first skeleton from this locality. Continuous catalogue entries (Catalogue numbers 1273-1373) commenced in 1934. In 1937 K.P. Emory and G. Bowles undertook excavations which lasted several years. Catalogue numbers 1480 through to 2308 cover material from this period of activity. In 1951 C.E. Snow began his long and detailed study of these remains; his analysis was completed in 1957. In 1957 an additional 139 individuals were exhumed by R.N. Bowen (Catalogue numbers 260-1765) but are not included in Snow's manuscript.

Published reports: Snow, ms., 1962; Marshall & Snow, 1956; Marshall & Giles, ms.; Howells, ms., 1970a, 1970b.

Island group: Hawaiian
Island: No specific island or locality (Table 7)
Total number of individuals: 34 (32 adult, 2 subadult)
Skull/infracranial representation: 31 skull/crania, 2 partially complete infracranial skeletons.

Published reports including material from all island groups: Pietrusewsky, 1971; Shima and Suzuki, 1967.

Table 1. Skeletal collections from Australia, Melanesia, Micronesia*

	ADULT											SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
AUSTRALIA	1		1																		
MELANESIA																					
New Guinea			1		2																
New Hebrides Islands	1		1																		
Fiji Islands		1	4		14		14			3							1	2		3	
MICRONESIA																					
Marianas Islands																					
Guam	18	85	25	30	25	21	23	7	17	52		1	1	2		2					2
Saipan			2		3		3														
Tinian		1	11		3		3		1	13											

*Note: Figures in all tables indicate minimum number of individuals represented for each category.

Table 2. Skeletal collections from Western and Eastern Polynesia: Society, Marquesas, and Gambier groups.

	ADULT											SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
WESTERN POLYNESIA																					
Tonga Islands	1	7			1		1	2		1			1	1					1		1
Samoa Islands			3		1																
Line Islands																					
Fanning Island								1													
Hull Island			1																		
EASTERN POLYNESIA																					
Society Islands																					
Tahiti			6		7		5		1	1				2							
Unspecified Island			1		4	1	3	10	1												
Tuamotu Islands					6	1	9														
Marquesas Islands																					
Uahuka Island (Hane Dune Site)		17	2		1	1				4			13	1	1	1					1
Various Islands	5		6		6		1	1		3								1			
Gambier Islands																					
Mangareva Island			1		5											2					

Table 3. Skeletal collections from Marginal Polynesia: New Zealand and Hawaiian Islands (Hawaii Island).

	ADULT											SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
MARGINAL POLYNESIA																					
New Zealand			3																		
Hawaiian Islands																					
Hawaii Island																					
North Kohala			4							1											
South Kohala		1	5		3					5				1							
North Kona					3		2														
South Kona	1	18	36		6		1		2	2				1				1			
Hamakua		1	1							7						2					
Puna			1																		
Kau	10	6		3	1	2		3	2	31		5					2		5	1	25
Total Hawaii Island	11	26	49	3	13	2	3	3	4	46		5		2		2	2	1	5	1	25

Table 4. Skeletal collections from Marginal Polynesia: Hawaiian Islands (Kauai Island)

	ADULT											SUBADULT									
Kauai Island (Districts)	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
Hanalei			1					1													
Kawaihau	5	1	5		3	1				1		1									
Lihue	1		2	1	3		5			2											
Koloa		1			1			1		1				1							
Waimea		2	4		10	1	4		2	1				2		3		3			1
No specific locality					4													1			
Total Kauai Island	6	4	12	1	21	2	9	2	2	5		1		3		3		4			1

Table 5. Skeletal collections from Marginal Polynesia: Hawaiian Islands (Maui, Lanai, and Kahoolawe Islands)

	ADULT											SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
Maui Island (Districts)																					
Wailuku	3	1			2		2	3	3	1									1		
Makawao	1	1			4	1	7		1	3		1				1					
Hana		1			2		2	1		3							3		2		1
No specific locality			3		3				1	1											
Total Maui Island	4	3	3		11	1	11	4	5	8		1				1	3		3		1
Lanai Island (localities)																					
Kuahua			10		1		4														
Manele, Lopa, Puulealea, Kukui, Keonehehee, and Pohakekuia		1	6		2		2			2											
North Coast			9		19		13		2	68				1		2					1
No specific locality		13	7	1	10		11		30	6			1			2		1		1	
Total Lanai Island		14	32	1	32		30		32	76			1	1		4		1		1	1
Kahoolawe Island			1		1										2		2	1			

Table 6. Skeletal collections from Marginal Polynesia: Hawaiian Islands (Molokai, Necker, and Nihoa Islands)

	ADULT											SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains		Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
Molokai Island (localities)																					
West End			15		14		2									1		1			
Other	1	2	4		1		3							1		1					
Total Molokai Island	1	2	19		15		5							1		2		1			
Necker Island										1											
Nihoa Island							1	1	7	9									2		

Table 7. Skeletal collections from Marginal Polynesia: Hawaiian Islands (Oahu Island and No specific island or locality)

	ADULT										SUBADULT									
	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible only	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains	Complete skeleton	Skull with partial infracranial remains	Skull only	Cranium with partial infracranial remains	Cranium only	Mandible with partial infracranial remains	Mandible	Incomplete skull with partial infracranial	Incomplete skull	Partial infracranial remains
Oahu Island (Districts)																				
Honolulu	41	28	33	8	95	6	48	26	16	81	5	3	5		2		2	4	3	5
Ewa	1	3	1		9		8	1	2	5		1							1	1
Waianae	1		1		1			1		3										
Waialua			5		9	6	4	2	2	26	1	1	5			1			1	1
Koolauloa	2	2	6		16		11	2	3	13	1		1		1					
Koolaupoko (excluding Kokapu)	25	29	17	2	21	1	5	28	8	15	3	7	1		7			8	1	4
No specific locality			1		1		10		2	1							1			1
Total Oahu Island (excluding Kokapu)	70	62	64	10	152	13	86	60	33	144	10	12	12		10	1	3	12	6	12
Kokapu Locality only	Cranial and infracranial material representative of 1171 adults and 333 subadults (see text)																			
Hawaiian Islands																				
No specific island or locality			9	1	21					1			1		1					

Appendix A: Sample of questionnaire.

B. P. Bishop Museum Skeletal Collection Questionnaire

1. Name: ______________________
   Position: ______________________
   Address: ______________________
   ____
   ____
   ____

2. Have you ever utilized the skeletal collections of the B.P. Bishop Museum? __________
   If so, A. When and how long? ______________________
   B. What series were investigated? ______________________
   ____
   C. What sort of research was undertaken? ______________________
   ____
   ____
   ____
   ____
   D. Did any publications or unpublished manuscripts result wholly or in part from your researches on this material? Please list. ______________________
   ____
   ____
   ____

3. Do you intend ever to make use of these collections (whether you did so previously or not) in the foreseeable future and, if so, what sort of research would you undertake? ______________________
   ____
   ____
   ____

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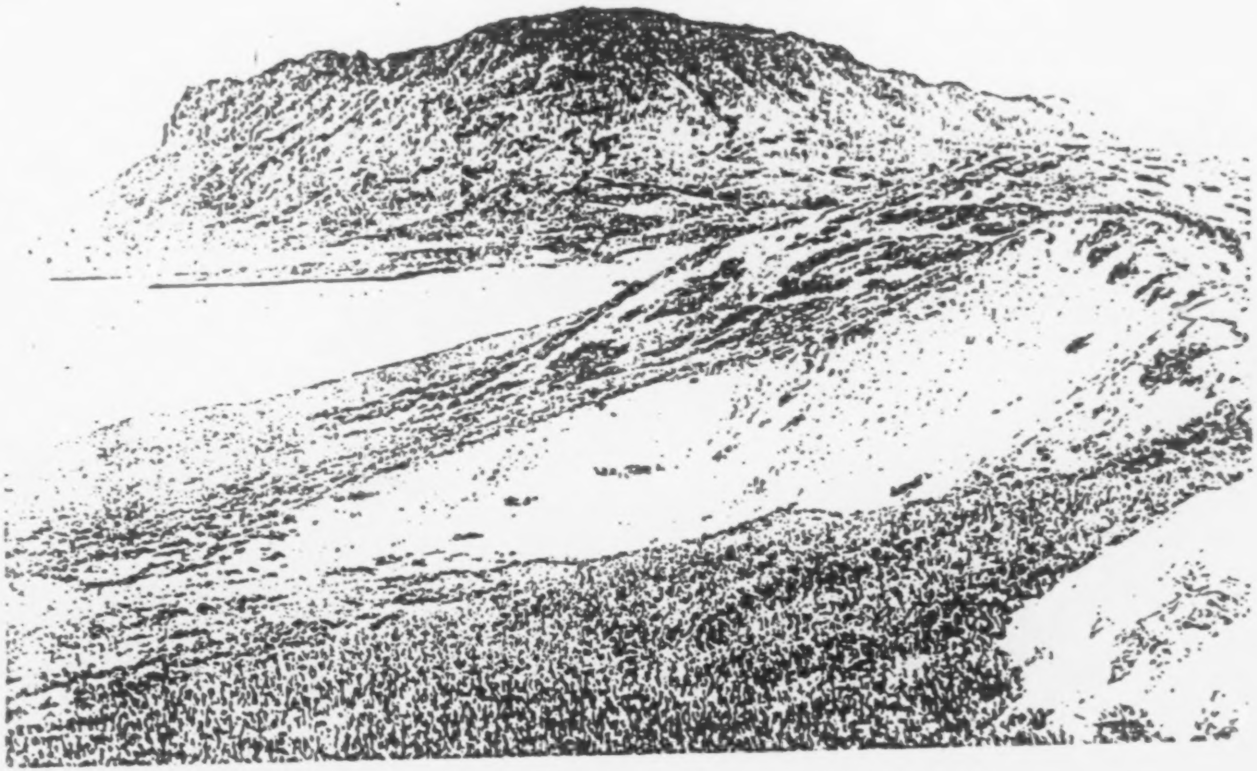

[illegible] Oahu Hawaiian Island

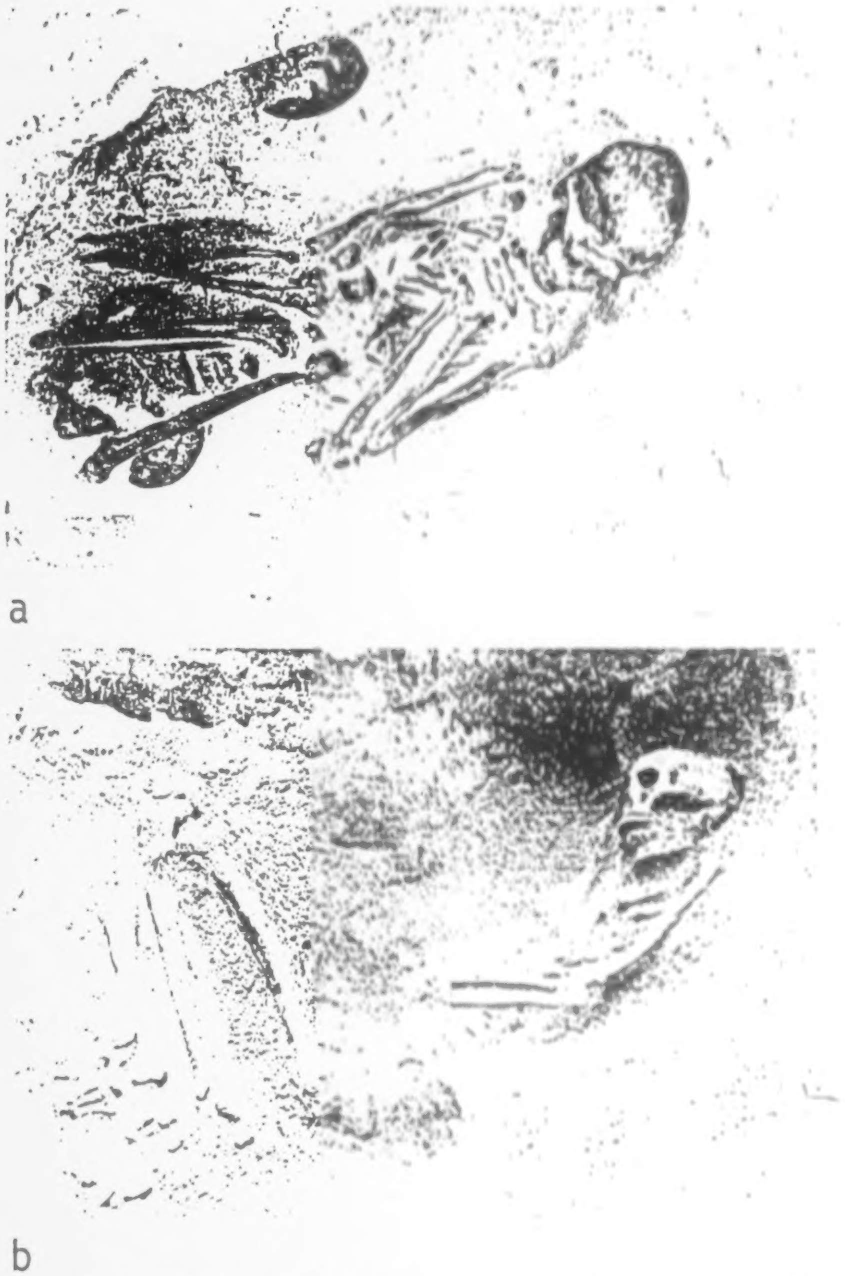

Figure 2. Burials excavated at Mokapu, Oahu: *a.* flexed; *b.* semiflexed.

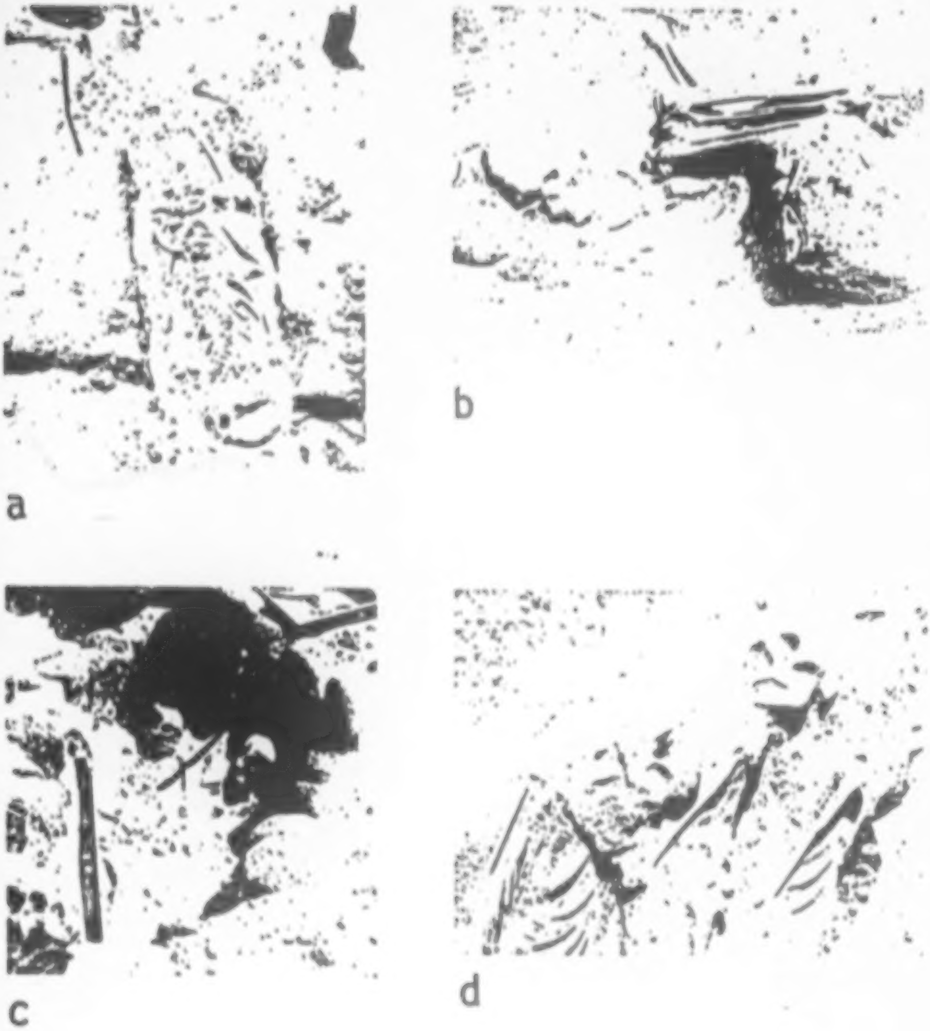

Figure 3. Burials excavated at Sand Dune Site (H1), Ka Lae, Hawaii, 1955: *a.* extended, Sq. N11; *b.* flexed, Sq. $I^1$7; *c.* multiple, Sq. M9; *d.* multiple, Sq. K8-9.

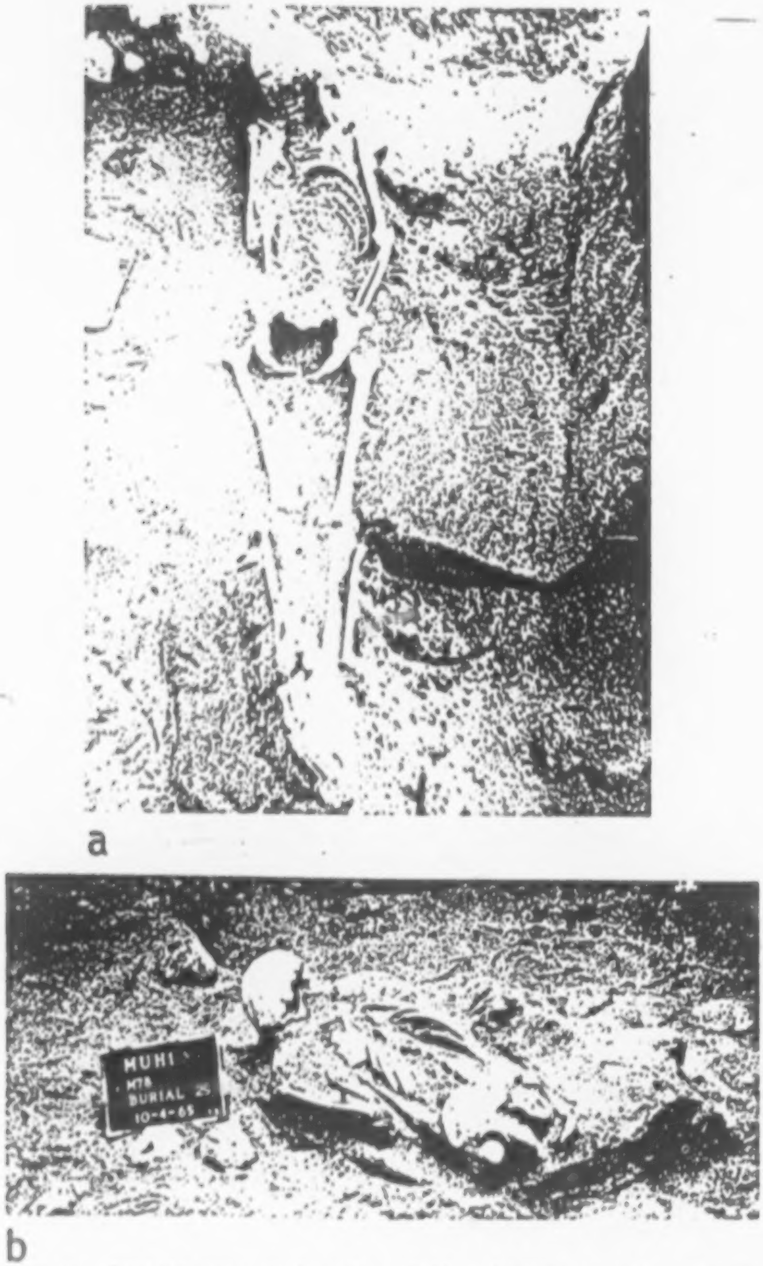
a
MUHI
M78
BURIAL 25
10-4-65
b

Figure 4. Burials excavated at Hane Valley (MUH1), Ua Huka, Marquesas Islands, French Polynesia: *a*. extended, prone; *b*. flexed.

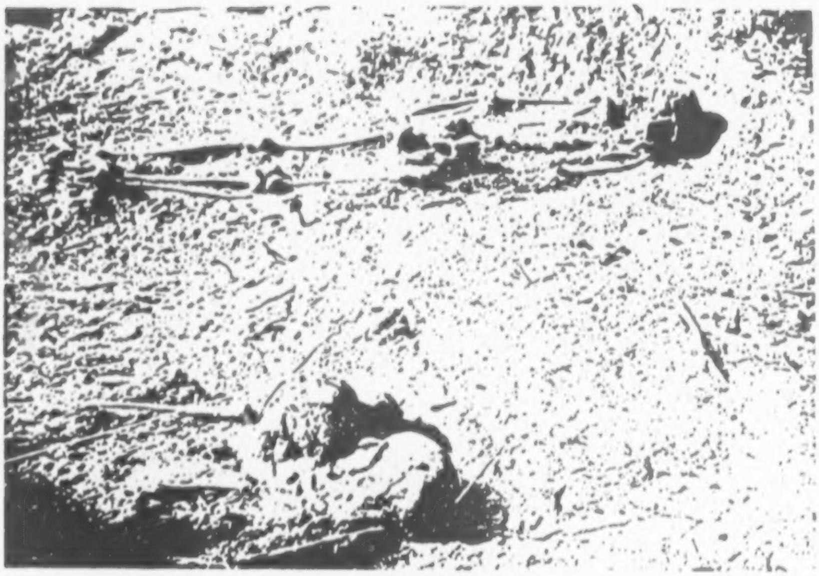

Figure 5. Burials, Maupiti, Leeward Society Islands, French Polynesia, (Ma 3), excavated by Y. S. Sinoto, June 12, 1963.

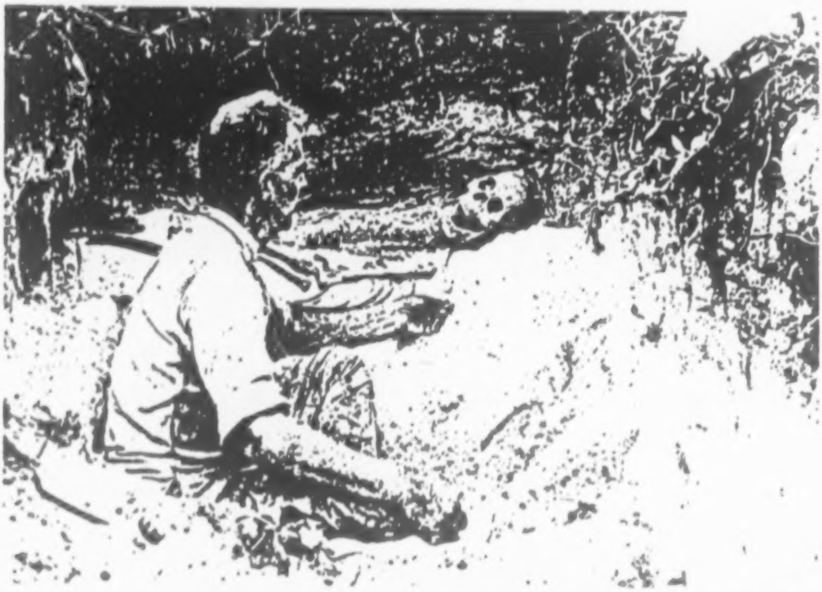

Figure 6. H. G. Hornbostel excavating burial on Guam, Mariana Islands.

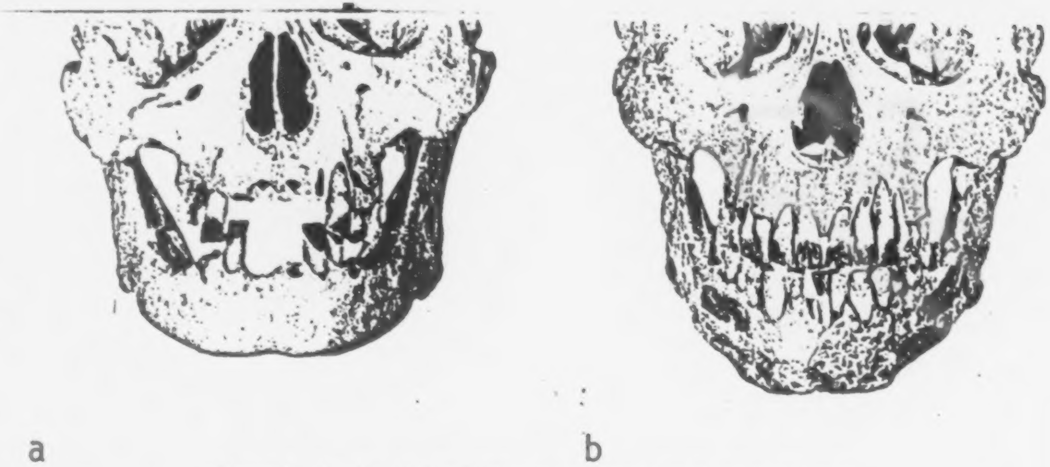

Figure 7. Skulls, Mariana Islands, collected by H. G. Hornbostel: *a*. No. 881, middle-aged male, Tinian Islands, 1925; *b*. No. 743, young adult male, Guam, 1927.

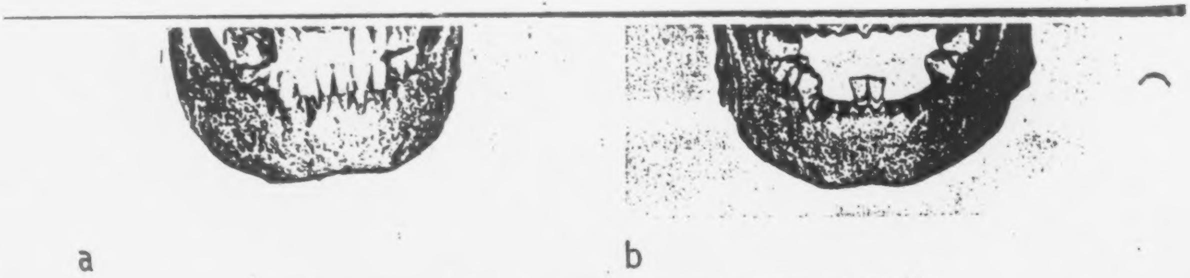

Figure 8. Skulls: *a*. No. 438, young adult female, Tonga, collected by W. C. McKern, 1920-21; *b*. No. 836, young adult male, Thikombia-i-Lau, Fiji, collected by E. H. Bryan, Jr., 1924.

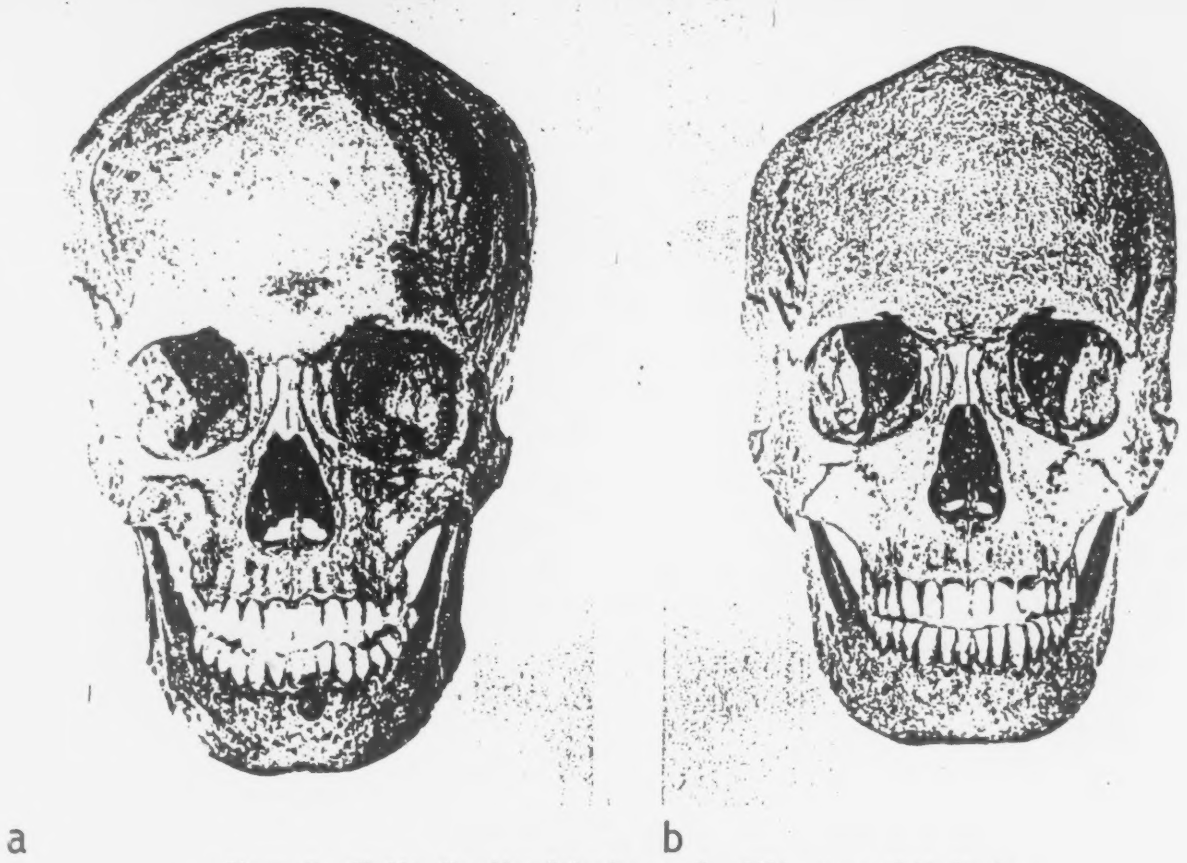

Figure 9. Skulls, Hawaiian Islands: *a*. No. 2664, young adult female, Mokapu, Oahu, collected by R. N. Bowen, 1957; *b*. No. 396 middle-aged male, Western Molokai, collected by F. A. Danforth and K. P. Emory, 1922.

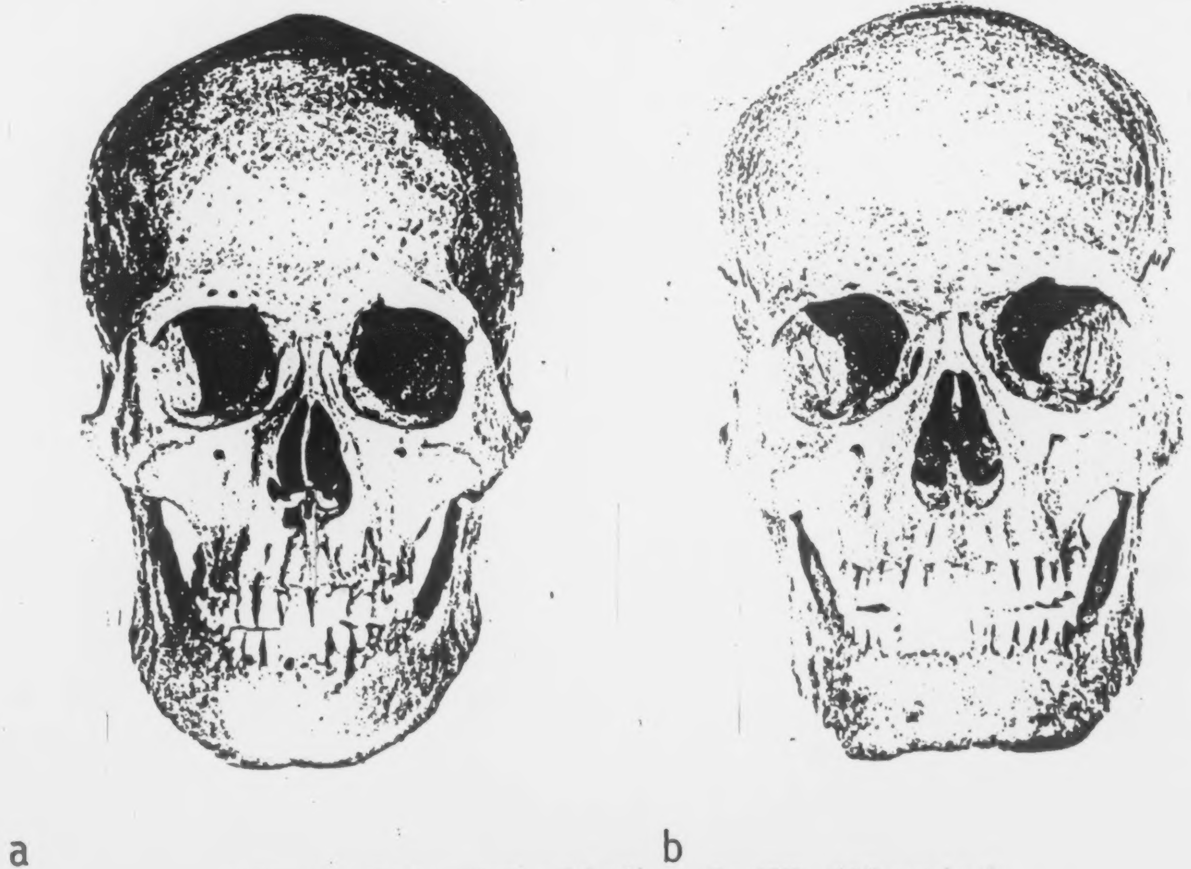

Figure 10. Skulls, Hawaiian Islands: *a*. No. 1239, middle-aged male, Honomalino, South Kona, Hawaii, collected by K. P. Emory, 1933, from a cave site; *b*. No. 2543, young adult male, Sand Dune Site (H1), Ka Lae, Hawaii, colleced by K. P. Emory, W. J. Bonk, and Y. H. Sinoto, 1954.

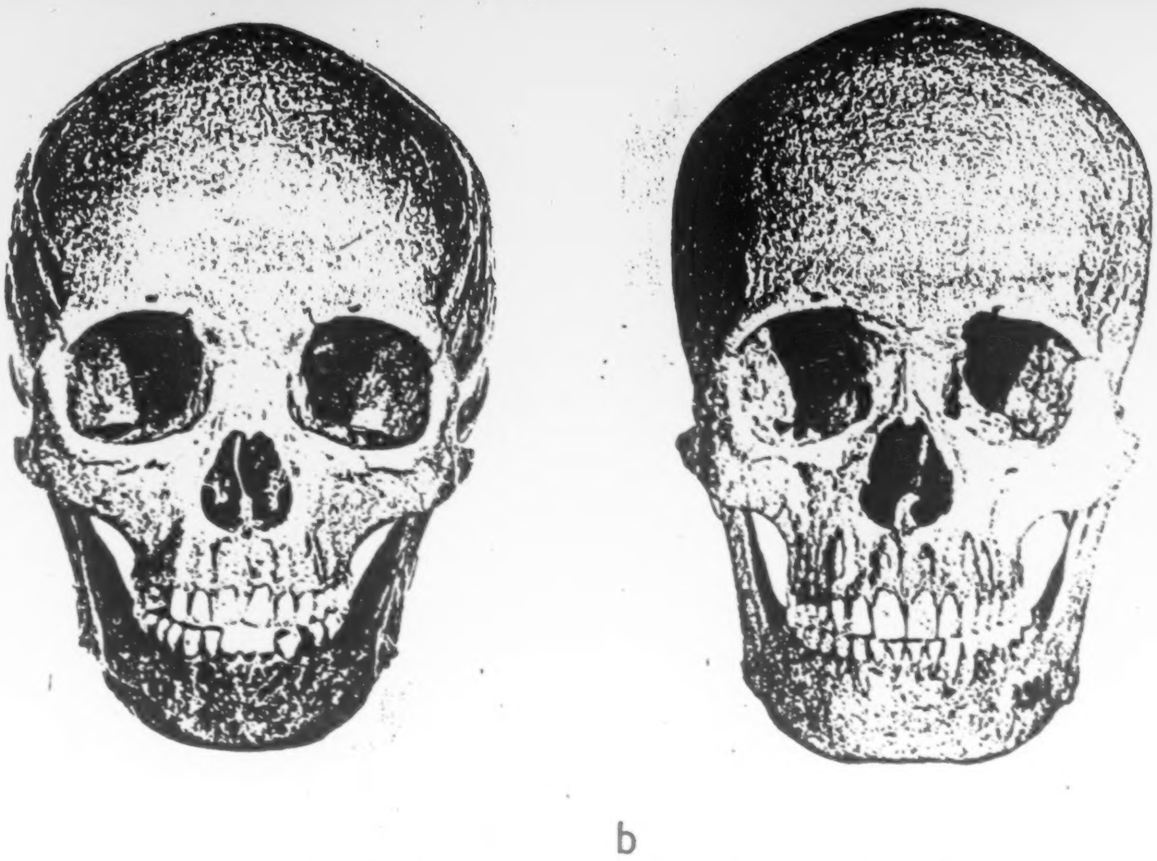

Figure 11. Skulls, Hawaiian Islands: *a*. No. 2328, young adult female, Wailua, Kauai, 1949; *b*. No. 2986, young adult female, Maui, collected by R. N. Bowen, 1968.

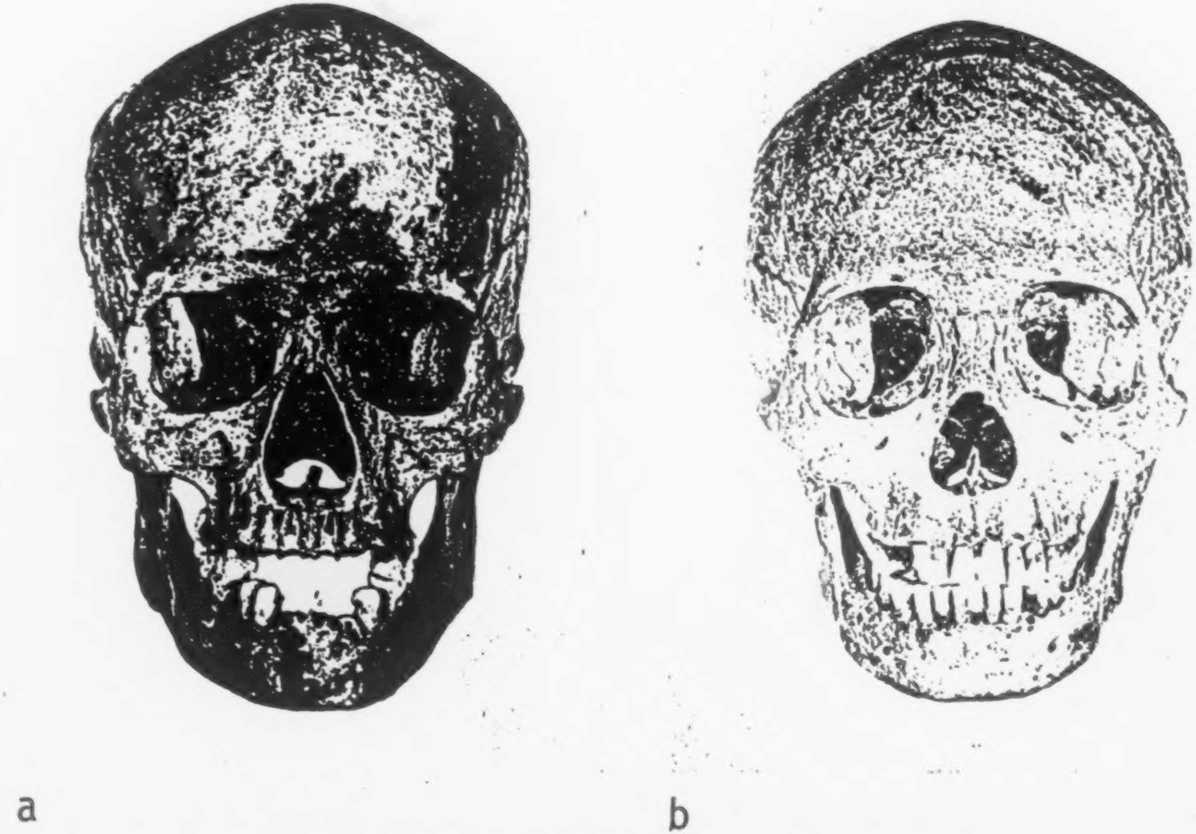

Figure 12. Skulls, Marquesas Islands, French Polynesia: *a*. No. 361 young adult female, Hivaoa, collected by R. Linton, 1920-21; *b*. No. 2980, middle-aged female, Uahuka, collected by Y. H. Sinoto, 1968.

B I S H O P   M U S E U M

1525 BERNICE STREET • P.O. BOX [illegible] • HONOLULU, HAWAII • [illegible] • [illegible] 847-3511 • FAX [illegible]

POLICY ON RELEASE OF HUMAN REMAINS

When a request is made for the reburial of specific groups of remains, Bishop Museum will make remains available in response to a reinterment plan meeting all legal and regulatory requirements. Such a plan will be developed in cooperation with all applicable parties and agencies, including but not limited to lineal descendants, the landowner, Office of Hawaiian Affairs, Department of Health, and the Department of Land and Natural Resources State Historic Preservation Officer.

It is and has been the policy of Bishop Museum that skeletal remains will be released to lineal descendants who identify the remains of specific individuals.

Approved: Bishop Museum Board of Directors, May 23, 1989
Collections Management Committee, May 2, 1989

Note: Objects directly associated with a burial are an integral part of that burial and would accompany the remains.

```
                     DETAILED DISPLAY           Local Control Number : 1049491

AUTHOR          : Somers, Gary F
                : United States. National Park Service
TITLE           : Kamoamoa Picnic Ground burial 86-1, Hawaii Volcanoes National
                  Park, Hawaii : preliminary report
PUBLISHER       : [Honolulu?] : National Park Service
PUB. DATE       : [1986]
DESCRIPTION     : 6 leaves, 2 leaves of plates : ill., 1 map ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Hawaii Volcanoes
                  National Park
                : Burial -- Hawaii -- Hawaii Volcanoes National Park
                : Hawaii Volcanoes National Park (Hawaii) -- Antiquities
NOTES           : "October 1986."
BIBLIOGRAPHY    : Bibliography: leaves 5-6.



Options: (?), (PRT) Print, (M)arc,
         (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY           Local Control Number : 1049491

AUTHOR          : Somers, Gary F
TITLE           : Kamoamoa Picnic Ground burial 86-1, Hawaii Volcanoes Nationa+

 #   Campus Bldg  Collection/Call Number                         Status/Due Date
--------------------------------------------------------------------------------
  1) MANOA HAML   HAWN / DU629.H3 S66 1986
  2) MANOA HAML   HAWN / DU629.H3 S66 1986 c.2




** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY           Local Control Number : 1070917

AUTHOR          : Kam, Wendell
```

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TITLE          : Human [illegible]eletal remains at Huilua Fishp[illegible] in Kahana Bay
PUBLISHER      : Honol[illegible] : State of Hawaii, Dept. of Land and Natural
                 Resources, Division of State Parks
PUB. DATE      : [1981]
DESCRIPTION    : 2 leaves, 1 leaf of plates : 1 map ; 28 cm
LANGUAGE       : ENGLISH
SUBJECT        : Archaeological surveying -- Hawaii -- Huilua
               : Archaeological surveying -- Hawaii -- Kahana Bay (Oahu)
               : Burial -- Hawaii -- Huilua
               : Burial -- Hawaii -- Kahana Bay (Oahu)
               : Kahana Bay (Oahu, Hawaii) -- Antiquities
NOTES          : Title supplied.
               : "May 13, 1981."


Options: (?), (PRT) Print, (M)arc,
         (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                 DETAILED DISPLAY            Local Control Number : 1070917

AUTHOR         : Kam, Wendell
TITLE          : Human skeletal remains at Huilua Fishpond in Kahana Bay

 #   Campus Bldg  Collection/Call Number                       Status/Due Date
------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.K24 K36 1981










•• LAST SCREEN ••
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                                 Max.# of headings: 1
SUMMARY LIST                                     # Headings: 1      <1>
                                                                   page 1
Burial -- Hawaii -- Kaaawa
   1. HAML HAWN DU629.K13 K36 1985   Kaaawa burial cave field inspection, Waia+
   2. HAML HAWN DU629.K13 K38 1987   Burial report, O'Connor/Fernandez (51-416+












   •• LAST SCREEN ••
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
This is the LAST SCREEN... press <ENTER> :
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AUTHOR          : Yent,   -tha
                : Hawaii. Division of State Parks
TITLE           : Examination of human burial material at Kahana Valley State
                  Park, Koolauloa, O/AYahu
PUBLISHER       : Honolulu : State of Hawaii, Dept. of Land and Natural
                  Resources, Division of State Parks
PUB. DATE       : [1980]
DESCRIPTION     : 7, 1 leaves : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Kahana Valley (Oahu)
                : Archaeological surveying -- Hawaii -- Koolauloa Region
                : Burial -- Hawaii -- Kahana Valley (Oahu)
                : Burial -- Hawaii -- Koolauloa Region
                : Kahana Valley (Oahu, Hawaii) -- Antiquities
                : Koolauloa Region (Hawaii) -- Antiquities
NOTES           : Caption title.
                : "January 4, 1980."
                : "Memorandum to James Yamashiro through Patricia Beggerly."

Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                      DETAILED DISPLAY          Local Control Number : 1061568

AUTHOR          : Yent, Martha
TITLE           : Examination of human burial material at Kahana Valley State +

 #   Campus Bldg  Collection/Call Number                      Status/Due Date
------------------------------------------------------------------------------
  1) MANOA HAML   HAWN / DU629.K24 Y44 1980
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                      DETAILED DISPLAY          Local Control Number : 1098070

AUTHOR          : Kam, Wendell
                : Hawaii. Division of State Parks, Outdoor Recreation and
                  Historic Sites. Historic Sites Section
TITLE           : Report on the human skeletal remains excavated on the island
                  of Kahoolawe
PUBLISHER       : [Honolulu] : Historic Sites Section, Department of Land and
                  Natural Resources
PUB. DATE       : [1985]
DESCRIPTION     : 12, 1 leaves : ill., 1 map ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Kahoolawe
                : Burial -- Hawaii -- Kahoolawe
                : Kahoolawe (Hawaii) -- Antiquities
NOTES           : "November 14, 1985."
BIBLIOGRAPHY    : Bibliography: leaf 12.
```

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     (N)ew search, <ENTER> Forward, (B)ack, (E)xit
           DETAILED DISPLAY          Local Control Number : 1098070

AUTHOR          : Kam, Wendell
TITLE           : Report on the human skeletal remains excavated on the island+

 #   Campus Bldg  Collection/Call Number                     Status/Due Date
----------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.K346 K36 1985
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                               Max.# of headings: 1
SUMMARY LIST                                   # Headings: 1      <1>  _
                                                                  page 1

Burial -- Hawaii -- Kailua (Oahu)
   1. HAML HAWN DU629.K244 C56 1980   Analysis of skeletal remains on Paul Fam+
   2. HAML HAWN DU629.K244 D35 1975   Progress report on archaeological survey+
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   ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
        (M)odify Search, (N)ew search, (B)ack, <ENTER> Forward, (E)xit :
             DETAILED DISPLAY          Local Control Number : 1109357

AUTHOR          : Somers, Gary F
                : United States. National Park Service. Pacific Area Office
TITLE           : Two human burials from Kalaupapa
PUBLISHER       : [Honolulu] : Pacific Area Office, National Park Service
PUB. DATE       : [1986]
DESCRIPTION     : 14 leaves, 5 leaves of plates : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Kalaupapa
                : Archaeological surveying -- Hawaii -- Molokai
                : Burial -- Hawaii -- Kalaupapa
                : Burial -- Hawaii -- Molokai
                : Kalaupapa (Hawaii) -- Antiquities
                : Molokai (Hawaii) -- Antiquities
BIBLIOGRAPHY    : Bibliography: leaves 11-14.
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Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY            Local Control Number : 1109357

AUTHOR          : Somers, Gary F
TITLE           : Two human burials from Kalaupapa

 #   Campus Bldg  Collection/Call Number                      Status/Due Date
-----------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.K26 S68 1986
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY            Local Control Number : 1071587

AUTHOR          : Clark, Jeffrey T
                : Hawaii. Dept. of Transportation
                : Bernice Pauahi Bishop Museum. Dept. of Anthropology
TITLE           : Preliminary report on human burial remains located in section
                  1, Mudlane-Waimea-Kawaihae Road corridor
PUBLISHER       : [Honolulu] : Dept. of Anthropology, B. P. Bishop Museum
PUB. DATE       : [1981]
DESCRIPTION     : 6 leaves : 1 map ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- South Kohala Region
                : Burial -- Hawaii -- Kohala
                : South Kohala Region (Hawaii) -- Antiquities
NOTES           : Caption title.
                : "Ms. Report 022481."
                : "Prepared for Dept. of Transportation, State of Hawaii,
                  February 1981."
```

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Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY            Local Control Number : 1071587

AUTHOR          : Clark, Jeffrey T
TITLE           : Preliminary report on human burial remains located in sectio+

 #   Campus Bldg  Collection/Call Number                      Status/Due Date
-----------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.K63 C51 1981
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                                Max.# of headings: 1
SUMMARY LIST                                    # Headings: 1      <1>
                                                                page 1
Burial -- Hawaii -- Koolauloa Region
   1. HAML HAWN DU629.K13 K36 1985   Kaaawa burial cave field inspection, Waia+
   2. HAML HAWN DU629.S66 Y46 1979   Reburial of human bones at Sunset Beach f+
   3. HAML HAWN DU629.K24 Y44 1980   Examination of human burial material at k+
   4. HAML HAWN DU629.K13 K38 1967   Burial report, O'Connor/Fernandez (51-416+
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  ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
        (M)odify Search, (N)ew search, (B)ack, <ENTER> Forward, (E)xit :
                DETAILED DISPLAY              Local Control Number : 1055807

AUTHOR           : Kam, Wendell
                 : Hawaii. Division of State Parks, Outdoor Recreation and
                   Historic Sites. Historic Sites Section
TITLE            : Archaeological report of a human burial at Manana Island,
                   Koolaupoko, Waimanalo, Oahu
PUBLISHER        : Honolulu : Historic Sites Section, Dept. of Land and Natural
                   Resources
PUB. DATE        : [1981]
DESCRIPTION      : 10 leaves : ill., 1 map ; 28 cm
LANGUAGE         : ENGLISH
SUBJECT          : Archaeological surveying -- Hawaii -- Manana Island
                 : Archaeological surveying -- Hawaii -- Waimanalu
                 : Burial -- Hawaii -- Manana Island
                 : Burial -- Hawaii -- Koolaupoko Region
                 : Manana Island (Hawaii) -- Antiquities
                 : Koolaupoko Region (Hawaii) -- Antiquities
NOTES            : "December 3, 1981."
BIBLIOGRAPHY     : Bibliography: leaf 10.

Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY              Local Control Number : 1055807

AUTHOR           : Kam, Wendell
TITLE            : Archaeological report of a human burial at Manana Island, Ko+

 #   Campus Bldg  Collection/Call Number                        Status/Due Date
-------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.M365 K36 1981
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                    DETAILED DISPLAY              Local Control Number : 1047282

AUTHOR          : Sinoto, Aki
                : Oceanic Institute
                : Bernice Pauahi Bishop Museum. Dept. of Anthropology
TITLE           : An archaeological reconnaissance of the Mala Wharf
                  Boat-launch ramp area, Lahaina, Maui
PUBLISHER       : [Honolulu] : Dept. of Anthropology, Bernice P. Bishop Museum
PUB. DATE       : [1975?]
DESCRIPTION     : 2 leaves, 1 leaf of plates : 1 map ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Mala
                : Archaeological surveying -- Hawaii -- Lahaina
                : Burial -- Hawaii -- Mala
                : Burial -- Hawaii -- Lahaina
                : Mala (Hawaii) -- Antiquities
                : Lahaina (Hawaii) -- Antiquities
NOTES           : Caption title.
                : "Ms. 082075."
                : "The fieldwork was carried out on Monday, August 4, 1975 ...".

Options: (?), (PRT) Print, (M)arc,
          (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                    DETAILED DISPLAY              Local Control Number : 1047282

BIBLIOGRAPHY    : Includes bibliographic reference.

 #   Campus Bldg  Collection/Call Number                          Status/Due Date
--------------------------------------------------------------------------------
 1) MANOA HAML   HAWN / DU629.M353 S56 1975
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                                  Max.# of headings: 1
SUMMARY LIST                                      # Headings: 1       <1>
                                                               page 1
Burial -- Hawaii -- Lanai
   1. HAML HAWN DU629.L363 E88 1988   Report on burial eroding in an area betw+
   2. HAML HAWN DU629.L363 E89 1988   Report on an exposed burial and subsurfa+
   3. HAML HAWN DU629.L363 F54 1988   Human remains found along Keomoku Road, +
 ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
        (M)odify Search, (N)ew search, (B)ack, <ENTER> Forward, (E)xit :
                DETAILED DISPLAY           Local Control Number : 1035144

AUTHOR          : Ueki, Takeshi
TITLE           : Identification of platform crypt tombs in Hawaii
PUBLISHER       : [S.l. : s.n
PUB. DATE       : 1982?]
DESCRIPTION     : ii, 78 p. : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Lapakahi Region
                : Archaeological surveying -- Hawaii -- North Kohala Region
                : Burial -- Hawaii -- Lapakahi Region
                : Burial -- Hawaii -- North Kohala Region
                : Lapakahi Region (Hawaii) -- Antiquities
                : North Kohala Region (Hawaii) -- Antiquities
BIBLIOGRAPHY    : Bibliography: p. 73-78.

 #  Campus Bldg  Collection/Call Number                     Status/Due Date
---------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.L37 U35 1982

** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
   (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY           Local Control Number : 1037118

AUTHOR          : Cox, David Walter, 1939-
                : Hood Corporation
                : Archaeological Research Center Hawaii
TITLE           : Report on the burials recovered during the effluent
                  reclamation project at Wailua, Puna, Kauai Island
PUBLISHER       : Lawai : Archaeological Research Center Hawaii, Inc
PUB. DATE       : [1977]
DESCRIPTION     : vii, 51 leaves : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Wailua (Kauai)
                : Archaeological surveying -- Hawaii -- Lihue Region
                : Burial -- Hawaii -- Wailua (Kauai)
                : Burial -- Hawaii -- Lihue Region
                : Wailua (Kauai, Hawaii) -- Antiquities
NOTES           : "Prepared by Archaeological Research Center Hawaii, Inc.,
                  ARCH 14-71, for Hood Corporation."
                : September 1977."
BIBLIOGRAPHY    : Bibliography: leaves 49-50.

Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                DETAILED DISPLAY           Local Control Number : 1037118

AUTHOR          : Cox, David Walter, 1939-
TITLE           : Report on the burials recovered during the effluent reclamat+
 1) MANOA HAML  HAWN /  DU629.W448 C69 1977
 2) MANOA HAML  HAWN / DU629.W448 C69 1977 c.2




** LAST SCREEN **

This is the last page, press <ENTER> :
                    DETAILED DISPLAY              Local Control Number : 1055818

AUTHOR              : Kam, Wendell
                    : Hawaii. Division of State Parks, Outdoor Recreation and
                      Historic Sites. Historic Sites Section
TITLE               : Inspection of Niumalu Loop burial (site no. 517), Maunalua,
                      Honolulu, Oahu, TMK: 3-9-08:portion of 13
PUBLISHER           : [Honolulu : State of Hawaii, Dept. of Land and Natural
                      Resources
PUB. DATE           : 1986]
DESCRIPTION         : 13 leaves : ill., maps ; 28 cm
LANGUAGE            : ENGLISH
SUBJECT             : Archaeological surveying -- Hawaii -- Hawaii Kai
                    : Archaeological surveying -- Hawaii -- Maunalua
                    : Burial -- Hawaii -- Hawaii Kai
                    : Burial -- Hawaii -- Maunalua
                    : Hawaii Kai (Hawaii) -- Antiquities
                    : Maunalua (Hawaii) -- Antiquities
NOTES               : Caption title.
                    : "Memorandum to Historic Sites Section Report Files."

Options: (?), (PRT) Print, (M)arc,
         (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                    DETAILED DISPLAY              Local Control Number : 1055816

                    : "A site inspection of the subject burial [was made] on July
                      2, 1986."

 #   Campus Bldg  Collection/Call Number                        Status/Due Date
-------------------------------------------------------------------------------
 1) MANOA HAML  HAWN / DU629.H4 K36 1986




** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                                   Max.# of headings: 1
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                                                                    page 1
Burial -- Hawaii -- Mol  u Peninsula
   1. HAML HAWN DU629.M6 A83 1985   Archaeological reconnaissance at the Mokap+
   2. HAML HAWN DU629.M6 C56 1980   Mokapu burial : Ulupau Dune site, Kaneohe +
   3. HAML HAWN DU629.M6 N45 1982   Emergency excavation of human bones at Kan+









   ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
         (M)odify Search, (N)ew search, (B)ack, <ENTER> Forward, (E)xit :
                   DETAILED DISPLAY           Local Control Number : 1035144

AUTHOR          : Ueki, Takeshi
TITLE           : Identification of platform crypt tombs in Hawaii
PUBLISHER       : [S.l. : s.n
PUB. DATE       : 1982?]
DESCRIPTION     : ii, 78 p. : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Lapakahi Region
                : Archaeological surveying -- Hawaii -- North Kohala Region
                : Burial -- Hawaii -- Lapakahi Region
                : Burial -- Hawaii -- North Kohala Region
                : Lapakahi Region (Hawaii) -- Antiquities
                : North Kohala Region (Hawaii) -- Antiquities
BIBLIOGRAPHY    : Bibliography: p. 73-78.

 #   Campus Bldg  Collection/Call Number                     Status/Due Date
------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.L37 U35 1982

** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                             Max.# of headings: 1
SUMMARY LIST                                 # Headings: 1      <1>
                                                                  page 1
Burial -- Hawaii -- Pokai Bay
   1. HAML HAWN DU629.P63 H36 1986   Archaeological excavations at the Waianae+
   2. HAML HAWN DU629.P63 R56 1984   Report of archaeological consulting servi+









   ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd  (D)elete
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```
AUTHOR          : Smith, Marc
                : Tourtellotte, Perry
                : Hawaii. Division of State Parks, Outdoor Recreation and
                  Historic Sites. Historic Sites Section
TITLE           : Wailoa Bridge renovation project, site no. 50-10-35-11, 115,
                  burial removal from Lihiwai Street, Waiakea, South Hilo,
                  Hawaii, TMK:2-1-01:12
PUBLISHER       : [S.l. : Historic Sites Section, Dept. of Land and Natural
                  Resources
PUB. DATE       : 1988]
DESCRIPTION     : 3, 4 leaves, 4 leaves of plates : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Waiakea (Hawaii Island)
                : Archaeological surveying -- Hawaii -- South Hilo Region
                : Burial -- Hawaii -- Waiakea (Hawaii Island)
                : Burial -- Hawaii -- South Hilo Region
                : Waiakea (Hawaii Island, Hawaii) -- Antiquities
                : South Hilo Region (Hawaii) -- Antiquities

Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                 DETAILED DISPLAY           Local Control Number : 1098553

NOTES           : Caption title.
                : "26 October 1988."
                : "Memorandum to Historic Sites File."

 #   Campus Bldg  Collection/Call Number                        Status/Due Date
-------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.W57 S65 1988




** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                 DETAILED DISPLAY           Local Control Number : 1061152

AUTHOR          : Yent, Martha
                : Hawaii. Division of State Parks
TITLE           : Reburial of human bones at Sunset Beach from a
                  Pupukea-Paumalu beach lot, Koolauloa, Oahu, TMK: 5-9-01: 57
PUBLISHER       : Honolulu : Division of State Parks, DLNR
PUB. DATE       : [1979]
DESCRIPTION     : 2 leaves, 1 leaf of plates : 1 map ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Sunset Beach
                : Archaeological surveying -- Hawaii -- Pupukea
                : Archaeological surveying -- Hawaii -- Koolauloa Region
                : Burial -- Hawaii -- Sunset Beach
                : Burial -- Hawaii -- Koolauloa Region
                : Koolauloa Region (Hawaii) -- Antiquities
NOTES           : "August 30, 1979."
                : "Memorandum to file through Patricia Beggerly."
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Options: (?), (PRT) Pr[illegible], (M)arc,
        (N)ew search, [illegible]NTER> Forward, (B)ack, (E)xit :
              DETAILED DISPLAY            Local Control Number : 1061152

AUTHOR             : Yent, Martha
TITLE              : Reburial of human bones at Sunset Beach from a Pupukea-Pauma+

 #   Campus Bldg  Collection/Call Number                     Status/Due Date
------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.S86 Y46 1979
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :

                                            Max.# of headings: 1
SUMMARY LIST                                # Headings: 1       <1>
                                                              page 1
Burial -- Hawaii -- Waianae Region
   1. HAML HAWN DU629.P63 H36 1986   Archaeological excavations at the Waianae+
   2. HAML HAWN DU629.W42 K36 1984   Burial recovery at Waianae, Oahu (TMK 8-5+
   3. HAML HAWN DU629.P63 R56 1984   Report of archaeological consulting servi+
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   ** LAST SCREEN **
Options: (?), Line #, (PRT) Print, (A)dd, (D)elete,
      (M)odify Search, (N)ew search, (B)ack, <ENTER> Forward, (E)xit :
              DETAILED DISPLAY            Local Control Number : 1044926

AUTHOR             : Kelly, Marion
                   : Cordy, Ross H
                   : Sinoto, Yosihiko H
                   : Bernice Pauahi Bishop Museum. Dept. of Anthropology
TITLE              : Archaeological investigations at Waiehu Heights Subdivision,
                     Waiehu, Maui
PUBLISHER          : [Honolulu] : Dept. of Anthropology, Bernice P. Bishop Museum
PUB. DATE          : [1978]
DESCRIPTION        : 17 leaves : ill., maps ; 28 cm
LANGUAGE           : ENGLISH
SUBJECT            : Archaeological surveying -- Hawaii -- Waiehu (Maui)
                   : Archaeological surveying -- Hawaii -- Wailuku Region (Maui)
                   : Burial -- Hawaii -- Waiehu (Maui)
                   : Burial -- Hawaii -- Wailuku Region (Maui)
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NOTES              : Caption title.
                   : "Ms. 0.-078."

Options: (?), (PRT) Print, (M)arc,
         (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                   DETAILED DISPLAY            Local Control Number : 1044926

                   : "For Ueoka & Luna."
                   : Area was inspected from June through July 1978.
BIBLIOGRAPHY       : Bibliography: leaf 17.

 #   Campus Bldg  Collection/Call Number
---------------------------------------------------------------- Status/Due Date
  1) MANOA HAML  HAWN / DU629.W43 K45 1978
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                   DETAILED DISPLAY            Local Control Number : 1037118
AUTHOR             : Cox, David Walter, 1939-
                   : Hood Corporation
                   : Archaeological Research Center Hawaii
TITLE              : Report on the burials recovered during the effluent
                     reclamation project at Wailua, Puna, Kauai Island
PUBLISHER          : Lawai : Archaeological Research Center Hawaii, Inc
PUB. DATE          : [1977]
DESCRIPTION        : vii, 51 leaves : ill., maps ; 28 cm
LANGUAGE           : ENGLISH
SUBJECT            : Archaeological surveying -- Hawaii -- Wailua (Kauai)
                   : Archaeological surveying -- Hawaii -- Lihue Region
                   : Burial -- Hawaii -- Wailua (Kauai)
                   : Burial -- Hawaii -- Lihue Region
                   : Wailua (Kauai, Hawaii) -- Antiquities
NOTES              : "Prepared by Archaeological Research Center Hawaii, Inc.,
                     ARCH 14-71, for Hood Corporation."
                   : September 1977."
BIBLIOGRAPHY       : Bibliography: leaves 49-50.

Options: (?), (PRT) Print, (M)arc,
         (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                   DETAILED DISPLAY            Local Control Number : 1037118

AUTHOR             : Cox, David Walter, 1939-
TITLE              : Report on the burials recovered during the effluent reclamat+

 #   Campus Bldg  Collection/Call Number                    Status/Due Date
--------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.W448 C69 1977
  2) MANOA HAML  HAWN / DU629.W448 C69 1977 c.2
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY          Local Control Number : 1037113

AUTHOR          : Cox, David Walter, 1939-
                : Kauai County (Hawaii). Dept. of Public Works
                : Archaeological Research Center Hawaii
TITLE           : Burials and other archaeological observations, Waimea Town
                  Sewerage System, Phase II, Waimea, Kona, Kauai, Hawaii
PUBLISHER       : Lawai : Archaeological Research Center Hawaii, Inc
PUB. DATE       : [1975]
DESCRIPTION     : vii, 42 p. : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SUBJECT         : Archaeological surveying -- Hawaii -- Waimea (Kauai)
                : Burial -- Hawaii -- Waimea (Kauai)
                : Waimea (Hawaii Island, Hawaii) -- Antiquities
NOTES           : "Prepared by Archaeological Research Center Hawaii, Inc.,
                  Project 14-70, for the County of Kauai, Dept. of Public
                  Works, Contract No. 0622."
                : "November 1975."
BIBLIOGRAPHY    : Bibliography: p. 42.
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Options: (?), (PRT) Print, (M)arc,
        (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY          Local Control Number : 1037113

AUTHOR          : Cox, David Walter, 1939-
TITLE           : Burials and other archaeological observations, Waimea Town S+

 #  Campus Bldg  Collection/Call Number                          Status/Due Date
-------------------------------------------------------------------------------
  1) MANOA HAML  HAWN / DU629.W37 C69 1975 c.2
  2) MANOA HAML  HAWN / DU629.W37 C69 1975
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** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY          Local Control Number : 1010441

AUTHOR          : Cleghorn, June Noelani Johnson
TITLE           : Hawaiian burial reconsidered : an archaeological analysis
PUB. DATE       : 1987.
DESCRIPTION     : xi, 208 leaves, bound : ill., maps ; 28 cm
LANGUAGE        : ENGLISH
SERIES          : Theses for the degree of Master of Arts (University of Hawaii
                  at Manoa) ; Anthropology ; no. 1868 :
SUBJECT         : Hawaiians -- Mortuary customs
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              : West [illegible]aii Region (Hawaii) -- Antiqui[illegible]s
NOTES         : Typescript.
THESIS NOTE   : Thesis (M.A.)--University of Hawaii at Manoa, 1987.
BIBLIOGRAPHY  : Bibliography: leaves [197]-208.


Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
                     DETAILED DISPLAY            Local Control Number : 1010441

AUTHOR          : Cleghorn, June Noelani Johnson
TITLE           : Hawaiian burial reconsidered : an archaeological analysis

 #   Campus Bldg  Collection/Call Number                      Status/Due Date
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  1) MANOA HAML   HAWN / CB5 .H3 no.1868 c.2
  2) MANOA HAML   HAWN / CB5 .H3 no.1868



** LAST SCREEN **
Options: (?), Item #, (PRT) Print, (M)arc,
    (S)earch, (N)ew search, <ENTER> Forward, (B)ack, (E)xit :
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January 19, 1990

Dr. Donald Duckworth
Bernice Pauahi Bishop Museum
Post Office Box 1900 A
Honolulu, Hawai'i 96817-0916

RE: Request for inventory of human burial remains and burial goods disinterred from the island of Molokai and in the present possession of the Bishop Museum

Dear Dr. Duckworth:

Aloha kaua. My name is Edward Halealoha Ayau, staff attorney with the Native Hawaiian Legal Corporation and liaison officer for U.S. Senator Daniel K. Inouye. I helped organize the Native Hawaiian Burials Seminar last October. I am pleased with your comments at the Seminar expecially your willingness to work within present law regarding the return of human burial remains. I am writing to request an inventory of all native Hawaiian burial remains and associated burial goods in the present possession of the Bishop Museum that were disinterred from the Island of Molokai. I would also like to request a copy of the Museum's present policy regarding return of human burial remains.

I grew up on Molokai and am the grandson of Harriet Ne, cultural historian of Molokai. She has passed onto me much of her knowledge regarding the cultural history of Molokai. After the unfortunate events at Honokahua, my tutu has become much more aware of the burials issue. It is on her behalf that I make this request.

If there are any questions regarding this request, please do not hesitate to contact me.

Sincerely,
Edward H. Ayau
Edward Halealoha Ayau, Esq.

BISHOP MUSEUM
CELEBRATING A
CENTURY OF DISCOVERY

April 16, 1990

Mr. Edward Halealoha Ayau
Native Hawaiian Legal Corporation
1270 Queen Emma Street, Suite 1004
Honolulu, Hawai'i 96813

Dear Mr. Ayau:

In response to your inquiry localities on Moloka'i from which human remains came to Bishop Museum, a list is enclosed. This list shows the reference numbers we use to keep track of each set of remains, the number of remains included in that reference number, and the locality. In this case, the most we know is that these remains came from the island of Moloka'i. When we received the remains from others, that was all that was known about their origin.

Relating to locality data:

Records indicate that the remains recorded as Accession 1922.033 were exposed *"in sands blown across from Moomomi"* and that K. P. Emory was told by area residents that *"some of these may be Chinese wrecked on their way to South America and buried by Hawaiians in 1870."*

Records indicate that the remains recorded as Accession 1952.091 were exposed at *"the beach home of Mrs. Nottage, East Molokai."*

Except these two cases, the locality information is limited to that recorded on the enclosed list. Most of these remains were brought to the Museum by non-staff and had been exposed by wind or wave. Under these circumstances, specific locality data is not usually collected.

Relating to burial goods:

The records do not show any artifacts or other burial goods associated with these remains. It is our policy that burial goods belong with the skeletal remains. In many cases the offering that accompanied the deceased was organic such as a fish or a plant. Usually, the remains of these offerings were not recovered by those bringing remains to Bishop Museum. Again, wind and wave exposure often destroy such small items as a fish skeleton. When these

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offerings were recovered by archaeologists, they were put with the skeletal remains, but were usually not listed separately in the records. Due to the time involved, I have not asked staff to check each box before answering your inquiry. Be assured, if there are such materials, they will accompany the remains. I have asked staff to survey for burial goods stored with the remains as time permits. We will report on this aspect when the survey has been completed.

I should also note that, as is common with wind and wave exposed burials, many of these remains are partial skeletons. Some are represented by only one or two bones.

As you requested, I am enclosing a copy of our policy. I trust this information answers your inquiry and that, if you have additional questions, you will let us now.

With best regards, I am

Cordially yours,

W. Donald Duckworth
President and Director

WDD:bsfg
Enclosures

April 6, 1990

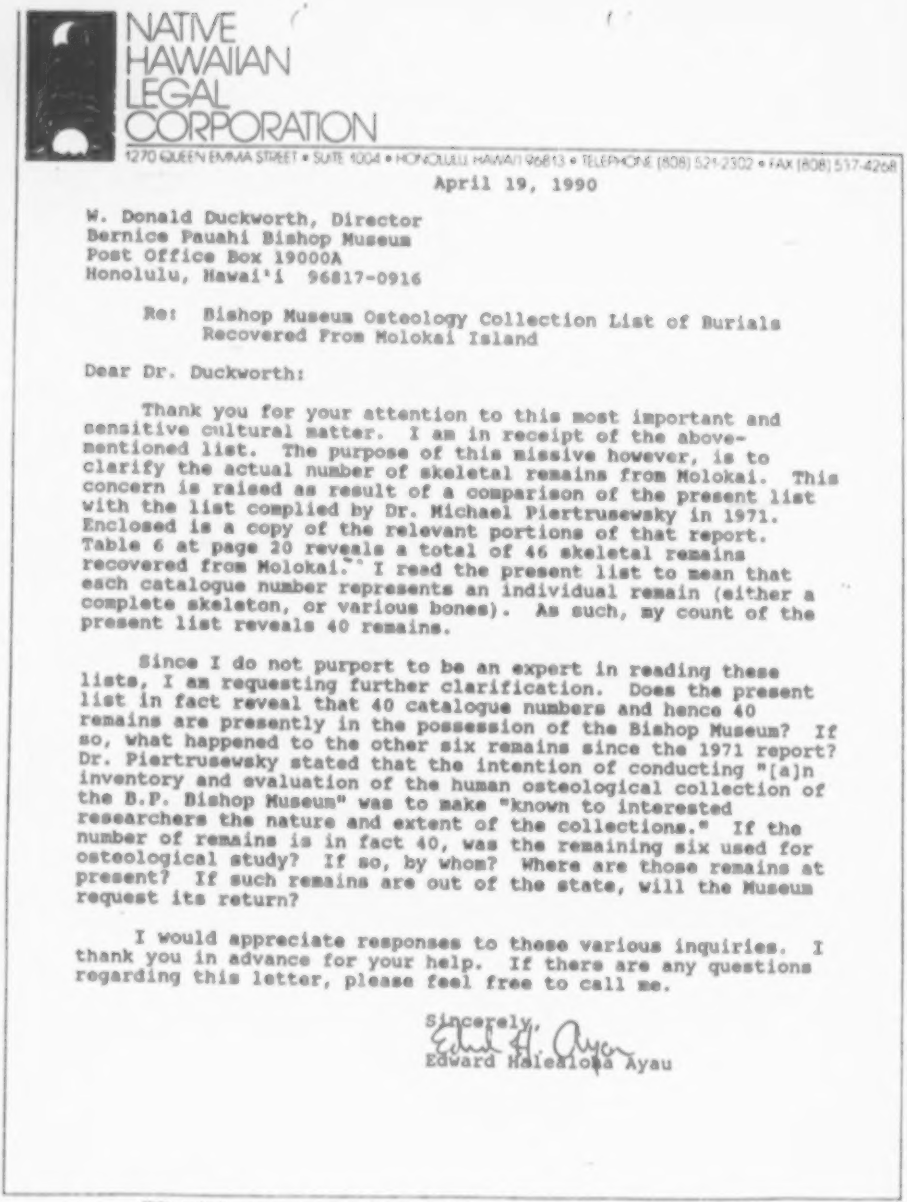
BISHOP MUSEUM OSTEOLOGY COLLECTION
LIST OF BURIALS RECOVERED FROM MOLOKA'I ISLAND

CAT. NO.	FIELD NO.	ACC. NO.	LOCALITY	AGE	SEX	NOTES
0203	B124		UNKNOWN	M	F	
0204	11917	1914.008	MOOMOMI	M	F	Nearly complete.
0205	11916	1914.008	MOOMOMI	M	M	
0206	9112	1907.010	WEST END	M	F	West End of Moloka'i.
0207	9113	1907.009	KAWELA	M	M	
0392		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.- Mar. 1922.
0393		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0394		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0395		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0396		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0397		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0398		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0399		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0400		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0401		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0402		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0403		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0404		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0405		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0406		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0407		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0408		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0409		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0410		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0411		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.

AGE CODES: C=Child J=Juvenile B=Subadult A=Adult M=Mature X=No data

0412		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0413		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0414		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0415		1922.033	WEST END	J	X	Acc. 0094, from wind-swept sands, Feb.-Mar. 1922.
0416		1922.033	WEST END	X	X	Acc. 0094, from wind-swept sands, Fe Mar. 1922.
2318	7		MOOMOMI	C	X	
2319	8		MOOMOMI	A	X	
2356			KALANI HEIAU	A	X	Acq. date 1952.
2428		1952.077	MOOMOMI	A	X	1952.
2429		1952.091	EAST MOLOKAI	A	M	
2605	1	1956.093	MOOMOMI	A	M	1937-38.
2606	2	1956.093	MOOMOMI	A	M	1937-38.
2609	5	1956.093	MOOMOMI	A	M	
2610	6	1956.093	MOOMOMI	B	F	
T-739			KAWELA	X	X	T-144, MOUND, T-81.

AGE CODES: C=Child J=Juvenile B=Subadult A=Adult M=Mature X=No data



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April 19, 1990

W. Donald Duckworth, Director
Bernice Pauahi Bishop Museum
Post Office Box 19000A
Honolulu, Hawai'i 96817-0916

Re: Bishop Museum Osteology Collection List of Burials Recovered From Molokai Island

Dear Dr. Duckworth:

Thank you for your attention to this most important and sensitive cultural matter. I am in receipt of the above-mentioned list. The purpose of this missive however, is to clarify the actual number of skeletal remains from Molokai. This concern is raised as result of a comparison of the present list with the list complied by Dr. Michael Piertrusewsky in 1971. Enclosed is a copy of the relevant portions of that report. Table 6 at page 20 reveals a total of 46 skeletal remains recovered from Molokai. I read the present list to mean that each catalogue number represents an individual remain (either a complete skeleton, or various bones). As such, my count of the present list reveals 40 remains.

Since I do not purport to be an expert in reading these lists, I am requesting further clarification. Does the present list in fact reveal that 40 catalogue numbers and hence 40 remains are presently in the possession of the Bishop Museum? If so, what happened to the other six remains since the 1971 report? Dr. Piertrusewsky stated that the intention of conducting "[a]n inventory and evaluation of the human osteological collection of the B.P. Bishop Museum" was to make "known to interested researchers the nature and extent of the collections." If the number of remains is in fact 40, was the remaining six used for osteological study? If so, by whom? Where are those remains at present? If such remains are out of the state, will the Museum request its return?

I would appreciate responses to these various inquiries. I thank you in advance for your help. If there are any questions regarding this letter, please feel free to call me.

Sincerely,

Edward H. Ayau
Edward Halealoha Ayau

BISHOP MUSEUM
CELEBRATING A
CENTURY OF DISCOVERY

April 26, 1990

Mr. Edward Halealoha Ayau
Native Hawaiian Legal Corporation
1270 Queen Emma Street, Suite 1004
Honolulu, Hawai'i 96813

Dear Mr. Ayau:

Thank you for your letter of April 19, 1990, drawing my attention to a lapse in the list of skeletal remains included in my letter of April 16.

Museum staff indicate that in re-typing the list of Moloka'i associated skeletal remains, one file number was inadvertently dropped from the final list. Usually, one number represents one individual. Apparently, after the 1922 West end remains were recorded in the bound book catalog, it was discovered that seven more partial skeletons belonged in that same series. To keep the group together in the book, the seven were recorded between 416 and 417 as "416A." The corrected list enclosed shows the six (6) adults and one (1) child represented by 416A. This would make 47 remains listed. This list shows one more than the 1971 report, as the remains found at Kawela came to Bishop Museum after 1971. All the remains on this list are at Bishop Museum.

Lists can be complicated. The numbers are merely to allow us to track, find, and retrieve remains consistently. Perhaps the best way to focus on the list is to focus on the locality and notes. Staff are available to answer any questions you may have about the list.

With best regards, I am

Cordially yours,

W. Donald Duckworth
President and Director

WDD:bsfg
Enclosure

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April 23, 1990

BISHOP MUSEUM OSTEOLOGY COLLECTION
LIST OF BURIALS RECOVERED FROM MOLOKA'I ISLAND

CAT. NO.	FIELD NO.	ACC. NO.	LOCALITY	AGE	SEX	NOTES
0203	B124		Unknown	M	F	
0204	11917	1914.008	Moomomi	M	F	"Nearly complete."
0205	11916	1914.008	Moomomi	M	M	
0206	9112	1907.010	West End	M	F	"Calvarium, of mature female, West End of Moloka'i."
0207	9113	1907.009	Kawela	M	M	
0392		1922.033	West End	X	X	Acc. 94, from wind-swept sands, Feb.- Mar. 1922.
0393		1922.033	West End	X	X	. . . .
0394		1922.033	West End	X	X	. . . .
0395		1922.033	West End	X	X	. . . .
0396		1922.033	West End	X	X	. . . .
0397		1922.033	West End	X	X	. . . .
0398		1922.033	West End	X	X	. . . .
0399		1922.033	West End	X	X	. . . .
0400		1922.033	West End	X	X	. . . .
0401		1922.033	West End	X	X	. . . .
0402		1922.033	West End	X	X	. . . .
0403		1922.033	West End	X	X	. . . .
0404		1922.033	West End	X	X	. . . .
0405		1922.033	West End	X	X	. . . .
0406		1922.033	West End	X	X	. . . .
0407		1922.033	West End	X	X	. . . .
0408		1922.033	West End	X	X	. . . .
0409		1922.033	West End	X	X	. . . .
0410		1922.033	West End	X	X	. . . .
0411		1922.033	West End	X	X	. . . .
0412		1922.033	West End	X	X	. . . .
0413		1922.033	West End	X	X	. . . .
0414		1922.033	West End	X	X	. . . .
0415		1922.033	West End	J	X	. . . .
0416		1922.033	West End	X	X	. . . .
0416A		1922.033	West End	X	X	. . . .
						6 skulls and 1 child mandible.
2318	7		Moomomi	C	X	Childs cranium.
2319	8		Moomomi	A	X	Mandible only.
2356			Kalani Heiau	A	X	Adult mandible. Acq. date 1952.
2428		1952.077	Moomomi	A	X	Adult skull. 1952.
2429		1952.091	East Molokai	A	M	Nearly complete adult male skeleton
2605	1	1956.093	Moomomi	A	M	Adult male cranium. 1937-38.
2606	2	1956.093	Moomomi	A	M	Adult male mandible. 1937-38.
2609	5	1956.093	Moomomi	A	M	Adult male cranium and mandible.
2610	6	1956.093	Moomomi	B	F	Adolescent female skull.
T-739			Kawela	X	X	T-144, (Mound), T-81.

AGE CODES: C = Child J = Juvenile B = Subadult A = Adult M = Mature X = No data in catalog.

Society for American Archaeology

Statement on S.1980
Native American Grave Protection and Repatriation Act

For the Senate Select Committee on Indian Affairs
May 14, 1990

Presented by Keith W. Kintigh, Chair
Task Force on Reburial and Repatriation

Introduction

Mr. Chairman, the Society for American Archaeology (SAA) is grateful for this opportunity to express our support for the general thrust of the draft substitute for S.1980 and to raise a few of our concerns about the bill.

The Society for American Archaeology is a scholarly and professional association composed of professional and avocational archaeologists committed to the scientific investigation, interpretation, and preservation of the archaeological heritage of the United States. We acknowledge and respect the diversity of beliefs about, and legitimate interests in, the past and its material remains.

Let me emphasize that we are not here to defend the status quo. Native American concerns must be incorporated into archaeological research strategies and museum collections policies; Native American audiences merit much more attention in museum exhibitions and in scientific reports on archaeological research. Let me also report that significant progress has been made. In the absence of legal requirements for repatriation, good faith negotiations among Native Americans, archaeologists, and museum professionals have often resulted in decisions to repatriate human remains and objects.

With some revision, the draft substitute for S.1980 could be an important vehicle for the appropriate repatriation of human remains and objects, the enhancement of Native American access to, and knowledge about, material aspects of their heritage, and the protection of Native American cemeteries from looting. We are grateful to the Committee and to Committee staff for moving so far towards a positive and workable bill.

What this Legislation Would Accomplish

Repatriation

Anthropologists are painfully aware of the fact that repatriation may result in a loss of information about the past. However, where a modern group has a relatively clear cultural affiliation with human remains or objects, that group's desire to control the treatment of its own material heritage should take precedence over the broader scientific and public interests.

S.1980 deals effectively with these cases. It requires a finding of cultural affiliation within the context of case by case consideration of repatriation requests by specific Native American groups. Through its definitions, particularly those of "cultural affiliation" and "Indian tribe," the bill defines an appropriate scope for the bill and properly accepts the responsibility to ensure that human remains or objects that are returned are turned over to the proper group. Finally, the disposition (be it reburial, placement in a tribal museum, or reintroduction into sacred use) of any repatriated remains or objects is determined by the group.

Inventory, Identification, and Notification

We strongly support the inventory and identification of museum collections and the notification of affiliated groups that is mandated by S.1980. It will not only provide Native American groups with the information necessary to develop repatriation requests, it will make available to them a tremendous amount of information about material aspects of their heritage that have been preserved by museums.

We hope that the Committee recognizes the immensity of the task that is required by this legislation and that the Congress is prepared to support it. Literally millions of items in the nation's museums must be inventoried and identified. The Society acknowledges the need for a specific deadline for completion of this task, and appreciates the draft's lengthening of the time available to complete it and the provision for extensions where good-faith efforts are being made.

Protection of Native American Sites

Section 4 of S.1980, dealing with ownership of human remains and artifacts has the potential to become an invaluable means of halting the ongoing looting of Native American graves that we all abhor. For decades, the Society and its members have worked to stop the looting of Native American sites and has supported legislation that provides severe penalties for pothunting. One of the Society's major initiatives, "Save the Past for the Future" has the prevention of looting as its goal.

There is strong Federal legislation (the Archaeological Resources Protection Act of 1979, as amended) prohibiting looting on Federal and Indian lands; many states have legislation that protects Native American sites of on State lands; and some have prohibited unauthorized excavations of Native American cemeteries on private lands.

Nonetheless, the antiquities market continues to stimulate widespread looting, particularly on private lands. The provisions of this bill should be clarified to make any unauthorized excavation of Native American graves or sacred sites illegal no matter where it occurs. Just as endangered species are protected wherever they go, all Native American cemeteries should be protected.

Through the ownership and sale provisions of S.1980 we see the opportunity to attack the market for funerary objects, sacred objects, objects of cultural patrimony and human remains by calling into question the ownership of such items. We strongly support clarification and extension of these provisions. Because it would be so much easier to enforce, elimination of the market for these items by prohibiting their sale and purchase would do far more to protect Native American human remains than all of the other all provisions of this bill and all of the other antiquities legislation.

SAA Concerns About S.1980

In an attachment to this testimony we have outlined a number of specific concerns and suggestions concerning S.1980. I will briefly discuss our major substantive concerns.

Remains for which Cultural Affiliation Cannot be Determined

As reflected by other sections of S.1980, legislation dealing with repatriation has the responsibility to ensure that when remains or objects are returned, they are returned to the appropriate individuals or groups. Because improved (DNA-based) methods for determining cultural affiliation are under development, it will soon possible to determine the affiliation of remains for which no affinity can now be established. Return of presently unidentifiable remains to the wrong group not only deprives the group to which the remains may be rightly affiliated, it also deprives all other groups, Native American and otherwise, of the opportunity to learn from those remains.

However, it should be recognized that even with improved methods of determining affiliation, some human remains will not be identifiable with any modern group, because many groups have become extinct. In these cases, there is, quite literally no one to whom these remains can be appropriately returned. Turning over such remains of any group would be, in our view, an unwarranted destruction of our human heritage.

It is our impression that S.1980 is intended to provide for the repatriation of remains and objects that are clearly related to modern groups and whose return is desired by the groups. Since there is broad agreement on other important issues dealt with by the bill, we strongly suggest that references to unaffiliated remains be deleted.

Excavation of Native American Human Remains and Objects

Section 4(c)(2) prohibits the disturbance of Native American human remains and objects without the consent of the heirs of the deceased or of the culturally affiliated group. While we are sympathetic with the intent, it is unworkable as it stands.

To the extent that it can modified to prohibit unauthorized excavation of Native American sites, we are strongly supportive. However, the bill must accommodate the forces of "development," in the forms of road construction, housing developments, and so forth. Nearly all Native American graves now excavated by archaeologists are removed because of imminent destruction. As written, this section would stall construction projects nationwide, with what we can only imagine would be unpleasant political consequences for all of us.

It must also be recognized that in the great majority of these cases, the determination of cultural affiliation cannot be done prior to the disturbance; one would have to excavate and study the remains or objects in order to determine the affiliation. This subsection also fails to specify how consent might be obtained where no cultural affiliation can be determined. It needs to be changed to account for the diverse situations to which it applies. When disturbance is unavoidable, it must in some way allow for development; it should provide for the situations in which cultural affiliation is not evident prior to disturbance; and at as soon as culturally affiliation (if any) can be reasonably determined, the concerns of Native Americans about the treatment and disposition of the remains or objects should be incorporated into the decision-making process.

Exclusion of Native American Human Remains and Other Objects from the Definition of "Archaeological Resource"

Notwithstanding any other law, subsection 4(c)(1) removes Native American human remains, funerary objects, sacred objects, and items of cultural patrimony from the definition of "archaeological resource" except for provisions imposing penalties on unauthorized disturbance. While this sounds innocent enough, we fear that an unintended effect of this subsection might be to exclude Native American human remains and these classes of items from Federal protection against Federally authorized excavation, removal, damage, or destruction.

Definition of Sacred Objects

While the definition of "Native American sacred object" has been substantially improved over the original version of S.1980, we feel that the definition is still overly broad. To us, this definition embodies an indeterminacy which would hinder the identification of sacred objects.

It seems that the intent here is to define sacred objects as those items that are in some sense essential for the observance of a religious ceremony, such as a kachina mask. However, the phrase "or which has been employed in the observance of such religious ceremony" would include items whose use in the ceremony is incidental, such as a bowl used to carry stew to the kachinas.

Definition of Legal Title

What is meant by "legal title" has great importance both for the subsection dealing with the sale of artifacts and for the section concerning repatriation. We are unclear as to the practical meaning of "legal title." We believe that this bears some consideration and possible definition in order to clarify this term within the bill. It may be noted that more stringent standards of legal title, which we would support, will both increase the effectiveness of the subsection prohibiting the sale of artifacts and will make it easier for Native American groups to have items repatriated.

Conclusion

The Society for American Archaeology sees many strengths in this legislation. We generally support the inventory and repatriation provisions and urge the clarification and strengthening of the sections that will impair the looting of Native American sites and make more difficult the sale of Native American human remains and Native American objects

On behalf of the Society, I thank you for this opportunity to testify on this important legislation.

SAA COMMENTS ON STAFF DRAFT OF S.1980 SUBSTITUTE

May 10, 1990

Keith Kintigh, Chair
Society for American Archaeology
Task Force on Reburial and Repatriation

General Comments

The Society for American Archaeology is pleased with the many improvements made in S.1980 and is most grateful to Select Committee staff members Lurleen McGregor and Steve Heeley for their thoughtful consideration of our earlier comments and suggestions.

We do have some suggestions and some concerns about certain portions of the new draft. Also we have a serious objection to the extension of the bill, beyond the language of the original drafts of both S.1980 and S.1021, to provide for the return of all unaffiliated remains. This also seems to go beyond the intent of the bill as it was described to us by Senator Inouye on May 2.

Sec. 2. Findings

Finding 2(b)(1), recognizing both Native American rights and scientific values is an important addition to the bill.

2(b)(2) [Delete]

In our view, repatriation is not fundamentally an issue of human rights; rather it involves a conflict among differing, legitimately held values concerning the proper treatment of human remains and sensitive Native American objects. Among Native American groups, there is a great diversity of beliefs concerning the proper treatment of the dead and the nature of sacred objects. Native Americans, anthropologists, museum professionals, and the public at large all have legitimate interests in the material record of American history, including Native American history.

S.1980 is sensitive to these diverse interests and provides the outline of a workable compromise among them. Despite its rhetorical appeal, the assertion of paramount human rights, in our view, does not aid in the resolution of the difficult issues covered by in this bill.

2(b)(4) [Delete]

The Society for American Archaeology's most strenuous objection to the current draft relates to finding 2(b)(4) and its implementation in Sec 6(a)(3)(D). While we accept the need to provide for return, on request, of culturally affiliated remains, we do not believe that it is appropriate to dictate the return of all culturally unidentifiable human remains.

Although we realize that the return of culturally unidentifiable remains is a sensitive issue of concern to some people, we also know that many of these remains have great value for scientific research and public education, as indicated by finding (b)(1). We, of course, subscribe to the finding (b)(3) that all human remains must be treated with respect at all times and believe that this respect can be accorded in the context of preservation within museums.

As reflected by other sections of S.1980, any legislation dealing with repatriation has the responsibility to ensure that when remains or objects are returned, they are returned to the appropriate individuals or groups. Because greatly improved (DNA-based) methods for determining cultural affiliation are under development, we can foresee a time in which it will be possible to determine the affiliation of remains for which no affinity can now be established. Return of presently unidentifiable remains to the wrong group not only deprives the group to which the remains may be rightly affiliated, it also deprives all other groups, Native American and otherwise, of the opportunity to learn from those remains. In addition, many Native Americans believe that it would be wrong, or even harmful, to receive and rebury remains that are not of their ancestors.

However, it should be recognized that even with improved methods of determining affiliation, some human remains still will not be identifiable with any modern group, because many groups have become extinct, both in historic and prehistoric times. In these cases, there is, quite literally no one to whom these remains can be appropriately returned. Turning over such remains of any group would be, in our view, an unwarranted destruction of our human heritage.

It is our impression that S.1980 is intended to provide for the repatriation of remains and objects that are clearly related to modern groups and whose return is desired by the groups. Since there is broad agreement on other important issues dealt with by the bill, we would strongly suggest that these difficult and highly contentious provisions be deleted.

Sec. 3. Definitions

We are strongly supportive of the revised definition for "Indian Tribe" 3(a)(5). We believe that this more accurately reflects the intent of the legislation as we understand (and support) it.

Of critical importance to us is the addition in the current draft of a definition of "cultural affiliation" 3(a)(10) that defines, to our satisfaction, a reasonable and workable scope for the bill (except as noted above).

3(a)(12) [Strike out the page 7, line 15-16 starting with "or":]

"(12) The term 'Native American sacred object' means an object, including (but not limited to) any dead or live animal or animal part, plant or plant part, mineral, or other substance, which is, or has been devoted to a Native American religious ceremony.'

The definition of "Native American sacred object" 3(a)(12) has been substantially improved over the original version of S.1980. However, we feel that this definition is still overly broad. It seems that the intent here is to define sacred objects as those items that are in some sense essential for the observance of a religious ceremony, such as a kachina mask. However, the phrase "or which has been employed in the observance of such religious ceremony" would include items whose use in the ceremony is incidental, such as a bowl used to carry stew to the kachinas. This definition then embodies an indeterminacy which would hinder the identification of sacred objects.

Elimination of this final clause, "or which is or has been employed in the observance of such religious ceremony," would improve the definition. However, we are quite open to other suggested improvements.

Sec 4. Ownership

This section has the potential to have a tremendous impact on the ongoing desecration of Native American cemeteries by looters. However, we are uncertain, in several places, of the intent. We believe this important section needs some clarification.

4(a)

As written, this section appears to cover all lands of the United States, not just Federal lands. As such, it seems to extend a measure of Federal protection to some Native American burial sites and some other localities of cultural importance that are on private and state lands. However, it is not entirely clear to us how these provisions could be effectively implemented or enforced on private lands.

If this section were to be restricted to Federal land, then it overlaps with 4(b) and should be combined with it.

This subsection, and 4(b) as well, is incomplete in that it appears to cover all Native American human remains, funerary objects, sacred objects, and items of cultural patrimony, yet there is no provision for the disposition of such items where no affiliation can be established. This omission is important, because if it were included, it might be used to remove the incentive for pothunting of sites for which cultural affiliation is not clear.

4(a)(1) [Delete in p. 9, line 12-13, "or the Native American group"]

"In the case of human remains or funerary objects, the heirs of the Native American who is represented by the remains or who was associated with the funerary objects, or"

In this part we understand "heirs," in the ordinary sense of the word, to be individuals who are directly descended from another individual. "Native American groups," in this sense cannot be heirs. However, these groups are included under subsection (a)(2).

4(a)(2)(A). [Substitute:]

"the governing body of the Indian tribe which is culturally affiliated with the the Native American who is represented by the remains or who was associated with the funerary objects, or the group with which the sacred objects or items of cultural patrimony were associated."

This suggested revision incorporates the term "cultural affiliation," which is defined in the bill rather than "member" and "originated" which are not. While it is a bit longer, we hope that it may also be clearer.

These revisions to subsection (a) are not intended to change the meaning in any way.

4(a)(3) [Add]

(3) in the case of Native American human remains, Native American funerary objects, Native American sacred objects, items of Native American cultural patrimony for which cultural affiliation cannot be ascertained, in accordance with regulations promulgated by the Secretary of the Interior, after consultation with the Review Committee established in Section 6 of this act.

4(b) It appears to us that repatriation of human remains and objects from Federal lands is adequately dealt with in section 5 since these remains and objects must legally be under the ownership or control of a Federal agency (except those already owned by Native groups). Because the 5 numbers under this subsection are not mutually exclusive, and because many different groups might satisfy an individual criterion, this subsection introduces ambiguity and, in some cases, a contraction with 4(a). We suggest the following changes:

[Omit the final partial sentence of (b) and change the ending portion of the preceding sentence to:]

"...shall be considered to be owned by:"

4(b)(1) [Change to]

"(1) the Native American group, that can show cultural affiliation with such remains or objects, or"

This point subsumes point 4(b)(2)-4(b)(5). In subsection 4(b)(2) of the draft, "aboriginal use," could apply to many groups, and is thus ambiguous. In our view, "aboriginal use" use is not really relevant unless there is "cultural affiliation," anyway. Subsections 4(b)(3) and 4(b)(4) as we understand them, are equivalent to "cultural affiliation" listed as 4(b)(5).

4(b)(2) [Change to]

"(2) in the absence of a group that is able to show cultural affiliation, the Native American group that has jurisdiction over the tribal land on which such items were discovered."

Here we suggest "tribal land," as defined as more inclusive than than "reservation." As we understand it, our suggested point (2) would obtain in the absence of this law and thus may be unnecessary.

4(c)

4(c)(1) Either this subsection should be deleted or the provisions of law being overridden should be explicitly stated so we know what, exactly, is the effect. While we have not researched this point thoroughly, we fear that an unintended effect of this subsection might be to exclude Native American human remains and these classes of items from Federal protection (for example, in the Historic Preservation Act) against Federally authorized excavation, removal, damage, or destruction (e.g. road construction, housing developments).

4(c)(2) While we are sympathetic with the intent, this subsection is unworkable as it stands.

Nearly all authorized excavations of Native American graves are a result of "development" of various sorts. In the great majority of these cases, the determination of cultural affiliation cannot be done prior to the disturbance; one would have to excavate and study the remains or objects in order to determine the affiliation. The subsection thus poses a problem without a solution, how do you obtain consent without knowing the affiliation.

This subsection also fails to specify how consent might be obtained where no cultural affiliation can be determined. Were this section enacted as it is, it would be a major impediment to Federal and State agencies and private concerns engaged in or permitting development, who could be expected to bring great pressure to bear against the bill.

We see two underlying aspects of this subsection, both of which we strongly support. The first is the protection of Native American burial sites and the second is the incorporation of Native American concerns into decisions about the disturbance of burial sites (where it is preventable) and the determination of the disposition of remains that are disturbed.

We note that as it is written, this subsection affects burials on both Federal and non-Federal lands and as such, could be used to protect Native American burial sites. We suggest the following substitute, along with a modification of subsection 4(d)(2) to have its penalties extend to this subsection as well:

"(2) Notwithstanding any other provision of law, no person may excavate, or remove Native American human remains or funerary objects unless such activity is conducted pursuant to a permit issued under the Archaeological Resources Protection act of 1979 as amended, a State permit consistent with the regulations promulgated under this act, or a permit issued under this act."

To follow this, there needs to be a section providing for incorporation of Native American concerns into decisions about avoidable disturbance of graves and where, disturbance is unavoidable, a process for the assessment of cultural affiliation, notification of culturally affiliated Native American groups, and a determination of the disposition of the remains and objects. Section 120 of proposed S.1579 introduced by Sen. Fowler may provide some guidance on this point.

There also may need to be a section authorizing the Secretary of the Interior to issue permits, under specified conditions under this act.

Finally, there needs to be a section that deals with the accidental disturbance of human remains. Something like the following might work:

"(?) Persons discovering or disturbing Native American human remains or funerary objects through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity shall, upon discovery of such human remains or funerary objects, cease the activity causing the disturbance, make a reasonable effort to protect any remains or funerary objects goods disturbed or discovered, and report, at the earliest possible time, such discovery or disturbance in writing to the State Historic Preservation Officer, as defined in the Historic Preservation Act of 1966, of the State in which the remains or grave goods are situated."

"(?) It shall be a complete defense to prosecution under this section if the defendant can prove, by a preponderance of evidence, that the alleged acts were accidental or inadvertent, that reasonable effort were made to protect any human remains or funerary objects disturbed or discovered, and that the accidental disturbance or discovery was properly reported."

4(c)(3)(A) This section appears to be superfluous in that that all remains and objects (except those already owned by a Native group) excavated under the authority of a Federal law or permit are subject to the ownership or control of a Federal agency. Thus, repatriation requests should be satisfied through the provisions of section 5. However if this subsection is to remain, we suggest:

[Modify page 11 line 13:]

"provide for the repatriation, upon request, to the culturally affiliated Native...."

This makes clear that repatriation would not be forced on any group, who like the Zuni tribe might choose not to request repatriation. It also specifies that the appropriate group is that with which there is cultural affiliation.

We note that there is considerable overlap between subsections (a), (b), and (c) of this section and with the provisions of section 5. That is, a set of remains or objects from Federal land could be subject to provisions of all these sections and subsections.

4(d)

While we support this subsection in its present form, this subsection could be reworked in such a way that it would have an enormous impact on preventing the disturbance of Native American burial sites. This could be strengthened, by the incorporation of cultural affiliation, sacred objects, and objects of cultural patrimony:

"(B)[new] in the case of human remains or funerary objects for which the heirs of the Native American who is represented by the remains or who was associated with the funerary objects cannot be ascertained, or in the case of Native American sacred objects or objects of Native American cultural patrimony

> "(1) the governing body of the Indian tribe which is culturally affiliated with the the Native American who is represented by the remains or who was associated with the funerary objects, or the group with which the sacred objects or items of cultural patrimony were associated.
>
> "(2) an appropriate Native Hawaiian organization.

"(C) [old (B)]"

Whether or not the suggested changes are made, we are uncertain what would constitute "legal title." Does this term cover our mutual intent to stop trafficking in these items, or could it be defined to do so.

Section 5. Repatriation

Whether or not Native American groups request repatriation of human remains and appropriate objects as a result of the inventory, identification, and notification mandated by this section, a tremendous amount of information of importance for their heritages will be made available to those groups.

Many important changes have been made in this section. the lengthening of the time for the inventory and the possibility of extensions shows a recognition of the scope of this important undertaking.

5(a)(1) [Modify page 13, line 12-14:]

"...Native American sacred objects, objects of Native American cultural patrimony, Native American human remains, and Native American funerary objects."

This is a minor point but is seems to us that the use of "including" muddies the definitions of these terms.

5(a)(2)(A) [Modify page 13, line 20:]

"...with appropriate Native American government..."

5(a)(4)(B) [Modify page 14, line 23:]

"...as being culturally affiliated with that Native American..."

[Modify page 15, line 1-4:]

"...likely than not that the items or human remains are culturally affiliated with the Native American group."

To use a defined term "cultural affiliation" rather than "associated" and "originated"

5(b) covers repatriation by Federal agencies, while 5(c) covers Federal agencies and museums. 5(c) stipulates more fully the repatriation process. We believe that 5(b) can be deleted without significant effect. Failing that, the provisions for essential scientific study should be included in 5(b) and Federal agencies should be removed from 5(c).

5(c)(1)

We are unclear as to the practical meaning of "legal title." We believe that this bears some consideration and possible definition in order to clarify this term within the bill.

Section 6. Review Committee

6(a)(1) [Change page 19, line 2:]

"restoration" to "repatriation."

6(a)(2) [Modify page 19, line 6"]

"...appointed by the Secretary from..."

6(a)(3)(B)(i) [Modify page 19, line 18:]

"the identity or cultural affiliation of human remains..."

6(a)(3)(D) This section appears to have an ambiguous wording. I believe that the intent is that the committee is responsible for compiling an inventory, and recommending specific actions. However, it is possible to read this that the committee is responsible for compiling, recommending, and implementing a process. Assuming the former reading is the correct one, at a minimum, the intent should be clarified.

We feel that the proposed compilation of the inventory is impractical for this committee. A consideration of the issue of unaffiliated remains will probably be more productive after the other provisions of this bill are carried out.

While we would strenuously object to a mandate for implementing a process for the transfer of all unaffiliated remains, we also believe that it is unwise for the committee to concern itself with this issue, as discussed in our comments on 2(b)(4), above. The inventory, identification, notification, and repatriation provided for in Section 5 involves tens of millions of objects and will occupy many years. If this must be dealt with, let's do it later, and get on with the more urgent business of dealing with the affiliated remains about which there is so much immediate concern.

Section 7. Grants

7(a)(2) [Modify page 23, line 13:]

"...required under section 5 and in documenting human remains and objects to be returned as required under section 5."

We believe that it is important to attempt to preserve information concerning remains and objects to be returned under this bill. The documentation would involve photographs, measurements and other means of preserving reasonably accessible scientific information.

Should there be a provision for authorization of additional monies to Federal agencies to cover these same expenses?

Arizona State University

Department of Anthropology
Tempe, Arizona 85287-2402

May 29, 1990

Mr. Steve Heeley
Senate Select Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

Re: S1980; The Value of Skeletal Studies for Medical Research

Dear Steve:

At the hearing on S1980, testimony was introduced asserting that there is no medical literature to suggest that any scientific study of Indian human remains have ever benefited Indians from a health perspective. As this did not seem accurate to me, I discussed it with a member of the Society for American archaeology Task Force, Professor Phillip Walker of the Department of Anthropology, University of California Santa Barbara. He provided the following information that I would like to have inserted into the record.

Medical and health sciences journals indexed by the National Library of Medicine from January, 1986 - May 31, 1990 contain over 120 different articles dealing with paleopathology, archaeology and prehistoric skeletal remains. Although these papers contain data relevant to solving the health problems of people throughout the world, many of them are directly relevant to the health concerns of modern Native Americans. For example, skeletal studies have shown that the incidence of cleft palate among Native Americans from the Great Plains is much greater now than it was in prehistoric times. The identification of this difference provides valuable information for use in developing ways to prevent this developmental anomaly. Other conditions studied in this way that are of of direct relevance to the health concerns of modern Native Americans include spina bifida, otitis medius, tuberculosis, and rheumatoid arthritis.

The following is a bibliography of a few of the recent articles based on studies of prehistoric skeletal remains that are of direct relevance to the health concerns of modern Native Americans:

Bridges PS.
Spondylolysis and its relationship to degenerative joint disease in the prehistoric southeastern United States. American Journal of Physical Anthropology, 1989 Jul, 79(3):321-9.

Cybulski JS.
Brachydactyly, a possible inherited anomaly at prehistoric Prince Rupert Harbour. American Journal of Physical Anthropology, 1988 Jul, 76(3):363-76.

Dickel DN; Doran GH.
Severe neural tube defect syndrome from the Early Archaic of Florida. American Journal of Physical Anthropology, 1989 Nov, 80(3):325-34.

Kursunoglu S; Pate D; Resnick D; Haghighi P; Tyson R; Pitt M.
Bone reinforcement lines in chronic adult osteopenia: a hypothesis. Radiology, 1986 Feb, 158(2):409-15.

Loveland CJ; Pierce LC; Gregg JB.
Ancient temporal bone osteopathology. Annals of Otology, Rhinology and Laryngology, 1990 Feb, 99(2 Pt 1):146-54.

Porter RW; Pavitt D.
The vertebral canal: I. Nutrition and development, an archaeological study. Spine, 1987 Nov, 12(9):901-6.

Rogers JM; Dieppe PA.
Symmetrical erosive arthritis in Ohio Woodland Indians. Journal of Rheumatology, 1989 Jul, 16(7):1012-3.

Rothschild BM.
Diffuse idiopathic skeletal hyperostosis. Comprehensive Therapy, 1988 Feb, 14(2):65-9.

Saluja PG.
Evidence of spina bifida in skeletal remains from Ireland. Irish Medical Journal, 1986 Jun, 79(6):145-9.

Woods RJ; Rothschild BM.
Population analysis of symmetrical erosive arthritis in Ohio Woodland Indians (1200 years ago). Journal of Rheumatology, 1988 Aug, 15(8):1258-63.

Again, I'd like to thank you for your consideration of our concerns on S.1980. As our testimony indicated, you and Lurleen have made tremendous progress in developing a workable bill. We remain ready to help and look forward to continuing to work with you.

Sincerely,

Keith Kintigh
Associate Professor

National Congress of American Indians

Est. 1944

TESTIMONY BEFORE THE HONORABLE

DANIEL K. INOUYE

CHAIRMAN, SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

PRESENTED BY EDWARD LONE FIGHT, MEMBER
EXECUTIVE COMMITTEE
NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Chairman and Members of the Committee. My name is Edward Lone Fight. I am the Chairman of the Fort Berthold Tribal Council in North Dakota. I am here as a representative of the National Congress of American Indians (NCAI), the oldest national Indian organization in the country. The NCAI represents and advocates for the interests of federal and state-recognized American Indian and Alaskan Native tribes and groups and their members. I present this testimony on behalf of this constituency to express the NCAI's support of the Bill as introduced with the following comments.

It is painful to us that, on the eve of a presumably enlightened 21st Century, in our own lands, in our country, we are still seen in some quarters as the objects of a form of racism that continues to be disrespectful of our people and of our ancestors.

The records are there. We now call upon the U. S. Congress to come to our assistance to right these wrongs. In a Christian nation that reveres the sacredness of death and the rituals that surround the end of life, it is a sad commentary on how we, as a people, continue to be viewed in our own land.

Among the important issues that are being addressed by this legislation is the clarifying of ownership of Native American remains, objects and patrimony located on tribal and federal lands. We are also concerned about those that are removed from these areas, and we strongly support any language that addresses this.

While we understand the non-Indian value that is placed on scientific research and public education, it is a consideration that holds no value to our people when research needs have held captive the remains of our ancestors far beyond the time that is required to complete the studies and we demand that the respect for our human rights in this regard to placed above the value now given our claims on humanitarian grounds.

We are also concerned that the language does not include the concerns of those tribes and groups that are recognized by the various states. They are also members of the NCAI and we speak on their behalf that their itnerests must also be addressed. In this regard, we are making contacts with Native American groups throughout the country to be certain that there is not some segment such as these whose interests may be forgotten, or worse, ignored. We expect to provide you with this information in the future.

Many of our member tribes have begun to develop their own rules and regulations on the issue of repatriation and caring and protecting the remains of their deceased. We submit information from the Winnebago Tribe of Wisconsin which has established a Burial/Mounds Committee to protect ancestral remains, grave goods, burial, sacred and historical sites including but not limited to ancient earthworks located on present, historic and pre-historic lands of tribal occupation as determined by tribal laws, traditions and customs. The Committee is developing action plans establishing tribal policy and legal procedures to protect ancient shrines and to create self-regulating methods to preserve cultural, religious and historical burial objects that have a unique tie to the Winnebago Nation. We fully expect that such groups, developing their own expertise, will be among those who are consulted in the promulgation of Federal rules and regulations to carry out the sense of this legislation and we expect to forward statuatory language to this effect.

The expeditious return of human remains or objects has the caveat "unless they are indispensable for the completion of a specific scientific study, the outcome of which would be of major benefit to the United States." We question who will make this determination. The legislation does not specify that any Native American participation will be involved in these important deliberations. We now have many professionally-trained individuals who are emminently qualified to take part in such determinations and we suggest language which will assure their participation in these important decisions.

On the Review Committee to be established, we have

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On the Review Committee to be established, we have two comments.

1. Of the four to be recommended by Native American groups, we expect to submit language that one must be a Native American anthropologist or acadamician, one a Native American museumologist, and the others, Native American religious or cultural people. We do not want the Committee to be mainly anthropologists and archaeologists.

2. We suggest that the Chair be elected by the Committee.

The National Congress of American Indians is willing to work on the implementation of this Bill with other organizations and the Coalition on Cultural Rights Legislation that we have formed.

Let the record reflect that we are also filing the attached testimony consisting of four pages on behalf of KaLahui Hawaii, a group of Native Hawaiians who could not be here today due to a lack of timely notice of the hearings. We support the concerns of these our brothers.

We thank the members of this Committee for your continuing work in support of our deep concerns on the issues addressed by this Bill and for the opportunity to present our views on it.

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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Henry "Hank" Baylor
Antoine "Tony" Incashola
John "Chris" Lozeau

May 29, 1990

Honorable John McCain
Co-Chairman
Senate Select Committee on
  Indian Affairs
SH-838 Hart Senate Off.ce Bldg.
Washington, DC 20510-6450

Dear Co-Chairman McCain:

I am writing on behalf of the Confederated Salish and Kootenai Tribes ("Tribes") to offer our support and comments on the Substitute Bill for Senate Bill 1980, entitled "Native American Grave Protection and Repatriation Act." The Tribes are in full support of the Bill, with the exception of the following changes we recommend to some of the substantive provisions.

Recommended Changes

Section 2. Findings.

The Tribes recommend that the last portion of Subsection (b)(1), which provides "and for the values of scientific research and public education;" be stricken. It must be remembered that any federal legislation regarding the repatriation of Indian remains is first and foremost, a bill dealing with the human rights of Indian people, and not legislation providing for the study of such remains. This is consistent with American values which accord dignity and respect for the sanctity of the dead.

Section 3. Definitions.

In Subsection (a)(11), the term "artifact" should be deleted. Use of the word artifact perpetuates the injustice caused by federal historical and archaeological resource statutes which classify Indian remains and associated burial materials as federal property. We recommend that the term "item" or "material" be used instead.

Section 4. Ownership.

In Subsection (b) page 10, line 5, the Tribes recommend that the term "owned" by the Native group be changed to "in the possession and control" of the Native group. The term "owned" is contrary to our values in that a tribe does not own Indian dead bodies or associated burial items, but a tribe does have spiritual, cultural and legal interests in them and the right to determine their disposition and treatment.

In Section 4, Subsection (c)(1), the term "historical" should be inserted on line 25, page 10 before the term "archaeological resource." So the pertinent provision would read "and Native American cultural patrimony shall not be considered an historical or archaeological resource for purposes of any provision of law other than a provision that imposes a civil or criminal penalty for the unauthorized excavation, removal, damage, or destruction of historical or archaeological resources." This would ensure that Indian remains or associated burial materials were not considered resources under provisions of state or national historic preservation acts.

In Subsection (c)(3)(A), the Tribes recommend that the language "but only after consultation with the review committee established in Section 6" be changed to "but only after consultation and concurrence with the review committee established in Section 6." Adding the concurrence requirement would ensure that the review committee has a meaningful role in the rulemaking process.

In Subsection (e), we recommend that the language "relinquishing title" be deleted and the following language be substituted "relinquishing possession or control." The word title has the connotation of ownership which is not appropriate when referring to Indian remains or associated burial items. Indian tribes do have a quasi-property interest in the remains and associated burial items, but use of the word title is contrary to the Tribes' cultural values which place the Tribes' in a position of stewardship over tribal remains and associated burial materials.

Section 5. Repatriation of Native American Cultural Patrimony.

In Subsection (D)(5), the Tribes' recommend that the type of notice that will be published in the Federal Register be clarified. The Tribes recommend that such notice only include a brief statement that the affected Native American group has been notified pursuant to the provisions of the Bill; such notice should not include a detailed description of the human remains or sacred objects.

In Subsection (D)(6), a limit should be put on the extension of time that could be granted to inventory and identify Indian remains and funerary objects.

In Subsection (c)(2), the Tribes' recommend that the provisions which shifts the burden of proof to tribes, if a federal agency or museum does not satisfy the burden of proof described in paragraph (1), be deleted from the Bill. The Tribes suggest that instead a presumption of possession and control by the Native American group be established if the federal agency or museum cannot satisfy its burden of proof. To shift the burden to tribes is too cumbersome and expensive for tribes to carry out, and may prevent Indian remains and funerary objects from being returned to their proper tribal descendants.

In addition, the provisions for scientific study in Subsection (3), page 18, lines 10-12, needs to be clarified. This provision requires a "federal agency or museum to expeditious return human remains or objects to the Native American group unless they are indispensable for the completion of a scientific study, the outcome of which would be a major benefit to the United States." There needs to be limits set on how long study will be allowed, and more importantly, who will determine whether the remains or objects are "indispensable." The Tribes suggest that the responsibilities of the review committee established in Section 6 be expanded to include whether scientific study should be permitted under the provisions of Section 5(c)(3). Such determination of whether study is indispensable should also be made with the consultation and concurrence of the affected Native American or Native American group.

General Comments

The Tribes recommend that the language of Section 4(b)(2), of the original Senate Bill 1980 be included in the Substitute Bill. This provision provides "[n]otwithstanding any other provision of law, the human remains of a Native American sacred objects, and funerary objects shall not be disturbed without the express consent of the governing body or representatives of the Native American group that is culturally affiliated with such human remains or sacred objects." This provision would give tribes the right to become involved in federal or federally funded projects early on in the agencies activities, and, in some instances, prevent further disturbance of Indian remains once discovered, and to ensure that such remains are treated respectfully if they need to be removed or reburied. Tribal consultation and concurrence is critical from the beginning of the process set out in this Bill.

With the exception of our above comments, the Tribes are in full support of Substitute Bill S. 1980. Federal legislation is necessary to permit tribes to play a significant role in the decision-making process regarding the disposition of the remains of their ancestors and associated burial materials. The Bill is consistent with American values which recognizes the sanctity of the dead, and insures that Indian dead are treated with dignity and respect.

Sincerely,

Michael T. Pablo

Michael T. Pablo
Chairman of the Tribal Council

MASHANTUCKET PEQUOT TRIBAL COUNCIL

May 8, 1990

Senator John McCain
SH-111 Russell Senate Office Building
Washington, DC 20510-0303

Dear Senator McCain:

For the past two years, I have worked for the Mashantucket Pequot Tribe coordinating the Tribe's 10 year effort in establishing the material and conceptual content of their Tribal museum and research center. In conjunction with this effort, the Tribe has studied Federal and states' existing and pending legislation concerning archaeological privileges and museum praxis in relationship to Native peoples rights.

The Tribe's Cultural Resource Department has familiarized itself with the wealth of writings on the very emotional and heartfelt requests by Native peoples across the continent for the cessation of Indian grave robbing, and for the repatriation of human skeletal remains and their funerary objects already disinterred and residing in museums, historical societies, universities, laboratories, bookshelves and living room mantles. We've all wrestled with the ethics of collections' custody, scientific interests, religious freedoms and that of the public trust. Heated philosophical arguments have come from many sectors of society, only to be reduced to issues of ownership and the elevated worship of science over the spirit of living our lives and laying our loved ones to rest.

Here at the Mashantucket, the Tribe's burial grounds (dating well before European contact in 1607) were out of their hands after the mid 18th Century until the Mashantucket Pequot Tribe won Federal recognition in 1983. Mashantucket Pequot Chairman Richard Hayward's grandmother, Elizabeth George Plouffe found evidence that grave robbing or pothunting had been going on for sometime prior to 1950 and complained to the State at that time. To the Tribe's knowledge nothing was ever done about the grave robbing. Elizabeth George lived in fear that when she died that her remains would also be desecrated and removed from her beloved Mashantucket just because she was Indian.

Box 160 / Indiantown Road / Ledyard, Connecticut 06339 / 203-536-2681

Since the return of the Pequot Cemetery to the Mashantucket Pequot Tribe in 1983, archaeologist Dr. Kevin McBride who has worked for the Tribe since 1984 conducted an initial survey of the Pequot Cemetery. He and his crew stopped counting after over 800 potted graves were identified by the craters that lay scattered on the forest floor. At this time, we really don't know when all of those graves and their contents were removed or by whom or where they are now. The Tribe has continued to have Dr. McBride conduct survey work in the Pequot Cemetery with full involvement of the Tribe. No graves are disturbed in this process--only mapped for Tribal records.

In closing, let me emphasize these points:

* In all of the Mashantucket Pequot Museum and Research Center, Inc. plans there has never been nor is there any need to have human skeletal remains and their funerary objects as part of the museum's collection.

* It has been this Tribe's experience that professional archaeology can be responsive to the Tribe's beliefs. Cooperation comes when respect is earned between people. That respect is based on ethical values shared by people and not that of scientific interests' alone. Unmonitored 'science' can be a hungry monster that forgets who it is serving. Archaeology must move beyond its position that it has some kind of inherent disciplinary 'right' to Indian graves. Considering the growing conflict between archaeology's interests and Native peoples pleas, it would behoove archaeologists to review archaeology's responsibilities and develop a code of ethics.

* The same can be said for museums, historical societies and private collectors.

** The Mashantucket Pequot Tribe **supports S.1980: To provide for the repatriation of Native American group or cultural patrimony.** S. 1980 sets up time frames, appropriations and is the first legislation to exclude from the definition of **archaeological resources** "human remains of a Native American, Native American sacred objects, and funerary objects."[SEC.4.(b)(1)]

** There are concerns about **S.1021: To provide for the protection of Indian graves and burial grounds, and for other purposes.** Comments are attached.

The American public must begin to understand that real people have justifiable concerns about their reality in our society. Let us move towards rectifying the position that we have placed Native peoples in by ceasing the dehumanizing process of treating Native peoples, their lands and their cultures as specimens for the elite.

Sincerely,

Kathleen A. Poole

Kathleen A. Poole, Interium Director
Mashantucket Pequot Museum and
Research Center, Inc.

Attachment (1)

S.1021 introduced by Senator McCain: To provide for the protection of Indian graves and burial grounds, and for other purposes.

COMMENTS

SEC.3.
(5) "The term "grave goods" means any object....
* Exchange terms to read ... **"funerary objects" means any item...**
* Reasoning: 'grave' connotes end product
vs 'funerary' conceptualizes original burial act.
'goods' connotes an item for sale, exchange, etc.
vs 'objects' is a neutral term.
'item' may also include botanical offerings,
i.e., pollen, ochre, seeds
* Adjust grammatical changes throughout the bill.

SEC.4.
(b) "Any person who knowingly violates subsection (a) shall, upon conviction, be fined not more than $10,000 per violation."
* Is this violation considered a felony?
* It must be, otherwise determent in relationship to fines is not sufficient. The illicit market for "grave objects" may be greater than the fine.

SEC.6.
(c)(2)(B) "are indispensable for the completion of a specific scientific study,..."
* Exchange terms to read **"...completion of a justified scientific study,..."**
* Reasoning: If the scientific study must show justification of real need for the study, parameters can be set, i.e.:

1.) time frames can be set for study if the Native American or Indian tribe agree to "analysis". Academia does not have the right to retain human skeletal remains and grave objects to pour over at their leisure.

2.) "analysis" has many levels so **criteria** must be established. If the human remains are treated as non-Indian human remains, criteria that a "medical examiner or coronor" are applicable. "Medical examiners" at least abide by an oath of ethics to humanity. Academia, while it demands its "academic freedoms", does not require or administer a standard ethics code for archaeologists (amateur and professional) and their students.

SEC.8.
(b) "...the museum shall return the items to the Indian tribe by no later than the date that is 90 days after the date on which the scientific study is completed."
* Again, is that "90 days" after 2 years, 5 years, 10 years?
* Reasoning: A scientific study incorporates time frame requirements for measurement, evaluation and accountability-- even when it is a longitudinal study, i.e. changes through time. It is long overdue that museums and researchers who specialize in human burials, in particlar, to be held accountable for their intentions and actions.

Hoopa Valley Business Council

P.O. Box 1348 ● Hoopa, California 95546 ● (916) 625-4211

Dale Risling
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

COMMENTS ON S1289
BY
HOOPA VALLEY BUSINESS COUNCIL
THE NATIONAL INDIAN FOREST RESOURCES MANAGEMENT ACT
SUBMITTED FOR THE HEARING RECORD
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
HONORABLE DANIEL INOUYE, PRESIDING

(Comments are offered on the substitute offered for S1289, presented to the committee on April 24, 1990, and dated "as revised 1-4-90").

The Hoopa Valley Tribe is located in northern California and occupies the Hoopa Valley "Square", an 88,000 acre reservation located on the Federally designated Wild and Scenic Trinity river. The reservation is steep but covered with nearly continuous stands of Douglas-fir forests which comprise about 76,000 commercial acres. The balance of the reservation is composed of non-commercial types, extremely landslide prone areas or river bottom agricultural and urban lands. The current allowable cut is estimated at about 14 MMBF, all of which is currently set aside for the tribe's log merchandising business. The tribe has had a tribal forestry program since 1972. In 1988 the tribe contracted the BIA's forestry and roads program through the Indian Self Determination act. Currently the tribal forestry program has approximately 24 employees, and subcontracts for outside expertise with an additional 4-8 resource specialists in the fields of botany, wildlife, geology, and archaeology.

The Tribe has had a long and occasionally tumultuous relationship with the USDI Bureau of Indian Affairs Branch of Forestry. In some cases it has only been the long standing insistence of excellence in forest management demanded by the Hupas which has led to changes in BIA forest management. For instance the tribe has, since 1980, had a vigorous (and tribally funded) environmental department which has strived to reduce the impact of logging on the environment. These activities have often been seriously opposed by the BIA.

It is with this background that we offer these comments on S1289.

The Hoopa Valley Tribe fully supports the concept and most of the provisions of S1289. We fully support the fact BIA forest management must be implemented on all forested lands, not just commercial forest lands. The Hoopa Valley Tribe also supports the creation of special deposit accounts Sec 206, as well as direct deposit of administrative fees Sec 202. Finally the Tribe supports codifying into law the currently expired Forest Development program, which currently is a Congressional "Add-On".

The Hoopa Valley Tribe suggests the following changes in the revised 1-4-90 version of S1289:

> SEC. 101(a)(7). We strongly agree with the intent of this section. We would change this section so forest management plans would apply to all resources, not those which are being consumed through "...increasing utilization..." Thus we would change the entire number (7) to read as follows:
>
> > (7) forest management plans should provide for detailed and coordinated treatment of the multiple resources of Indian land, as well as reflect the values and objectives of tribal integrated resources management plan;
>
> SEC. 101(a)(14) suggests NEPA and other federal laws should not automatically apply on Indian reservations. This findings is fine for those reservations where there is a set of analogous laws which serve to protect all of the resources of the reservation. However, this finding could also be used where such laws have not been passed by a Tribal Council, and could be used by the BIA to bypass federal compliance with such laws as NEPA. This is especially likely where the BIA has sole jurisdiction over the affairs of the reservation. Indeed, the Hoopa Valley forest resources were essentially managed without tribal authority by the BIA during our legal battle over the Short case. In this instance, where the BIA has sole authority to conduct ground disturbing activities, there should be no waiver of compliance with federal law.
>
> In a second situation, analagous to the first, tribe's would be at the mercy if the BIA were to propose a project, expressly over the desires of the Tribe. In this situation the Tribe, under SEC. 101(a)(14) would have no recourse through NEPA or other similar federal statutes to directly affect agency decision making. NEPA after all, is designed to support good decision making, not good decisions.
>
> We would proposed stripping this section entirely, or else replacing this section with language which forces the BIA to comply with federal law where tribal authority has not

superseded such laws as NEPA, etc.

SEC. 101(a)(15), is a finding concerning the civil regulatory authority of tribes. We strongly support this finding. However, the proposed S1289 does not include a mechanism within the act to provide tribes with the financial and regulatory support to enhance tribal regulatory capabilities. We believe there needs to be a portion of the BIA forestry budget which is clearly set aside to assist tribes in developing tribal regulatory authority with regards to forestry activities.

SEC. 102(2) states the purposes of the act. However, we believe this section is to strongly development oriented. We believe the objectives of Indian forest owners includes integrated management and analysis "..[of] the many products, benefits and services obtained from Indian forest lands; including non-market resources which are neither managed for sustained yield because they are not consumed in the market place nor are commonly considered as benefits, products or services."

SEC. 102(3) would clarify and secure application of forest management deductions back to the reservation. The Hoopa Valley Tribe strongly supports this provision, at least as far as it is proposed. However, we believe this section is not strong enough since forest management deductions apparently can still be returned to the US treasury under this provision. We would change this provision so that this provision explicitly prevents return of forest management deductions to the treasury as well as:

> "...assur[ing] that no other deductions shall be collected to be covered into the general funds of the U.S. Treasury or otherwise offset Federal appropriations for meeting the Federal trust responsibility for the protection, conservation, utilization, management, and enhancement of Indian forest lands;"

SEC. 103(4) defines the term forest. We would support a slightly different definition of "forest". We believe the last portion of the sentence should be eliminated, which restricts the term "forest" to those lands which "... [are] currently not developed or planned for exclusive non-forest use". As this section is currently worded, the term forest could easily be construed not to apply to wilderness areas, cultural areas etc, in spite of their being forested.

SEC. 103(13) defines the term "forest management plan". We believe this definition should be dropped entirely. We strongly believe an integrated resource management plan should be developed for all forested lands. This would eliminate the separate functional document known as a "forest management plan" which is prepared to regulate the detailed multiple-uses of intensively managed forest lands. Essentially we believe an overall IRMP for all forested lands whether dedicated to intensive timber management or not is a far more comprehensive management planning process than to individually produce functional documents for each separate resource on forested lands.

SEC. 201(1) should be changed by dropping everything after "set forth" and adding "integrated resource management plans." The balance of the sentence is heavily market place and production oriented (i.e. "... to the harvesting of forest products, forestation, timber stand improvement,...") which could in fact be directly opposite the goals of the forest management plan or IRMP for those lands being considered.

SEC. 201(5) requires that the relevant tribe shall determine whether forest lands should remain in their natural state. This section should be drastically changed since this is the only subsection within 201 which uses the term "...when the relevant tribe...". There is absolutely no apparent reason to include this modifier in the section. Essentially, this modifier places an additional burden on tribes who desire some or all of their lands be managed in a natural state. This section can be modified by dropping the words the relevant.

SEC. 202(c) is a section which the Hoopa Valley Tribe supports, at least as far as is written. We believe, however, this section needs to be strengthened so Forest Management deductions cannot be returned to the treasury. Currently section (c) only requires these funds not be offset. This section should be strengthened to read;

> "Forest management deductions shall not offset federal appropriations for management of Indian forest lands. Forest Management Deductions shall be considered as local no-year forest assistance accounts and shall accrue interest and be available until expended."

The Hoopa Valley Tribe also strongly supports the intent and generally the language contained in SEC. 202(e) and SEC. 204(a). However we believe both sections should be changed so that direct deposit accounts not be subject to Secretarial regulations. The term "Subject to such regulations as the Secretary may issue," should be dropped in both of these sections.

SEC. 203 (a)(1)(i) should be changed to triple stumpage value.

We believe SEC. 205(b) should be changed so that Secretarial responsibility for activities on Indian land would only be considered as a federal undertaking when there were no corresponding statutes issued by recognized tribal governments regulating such activities.

We strongly support all of the language in Title VII, SEC. 701, Tribal-Federal Cooperative Forest Land Consolidation.

Finally, we would propose the bill include language which would codify into law the current provisions of the the Forest Development Add-On's which have been approved by Congress. The act providing for the supplemental funding of backlog reforestation projects on indian lands expired in 1988, since there was a 10 year sunset provision in the bill when it was passed in 1977. There is still a need to provide funding for the reforestation backlog, since not all of the backlog has been retired yet. We firmly believe there should be a reforestation line item in the BIA forestry budget, similar to that of the USFS, which serves to supplement reforestation activities and to retire the backlog.

Thank you for the opportunity to provide this testimony.

Hoopa Valley Business Council

P.O. Box 1348 ● Hoopa, California 95546 ● (916) 625-4211

Dale Risling
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

May 21, 1990

Honorable Daniel Inouye
Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye:

We are pleased to be submitting the following testimony on S1289, the The National Indian Forest Resources Management Act. Thank you for holding hearings on this important issue.

We are very pleased to support this bill. Many of the provisions address longstanding concerns in Indian forestry, such as the change in deposit of timber sale proceeds directly into Tribal accounts, etc. We do, however, support several changes which we have noted in the enclosed testimony. Several of these changes are designed to strengthen the direct deposit account sections, and the administrative fee sections. We also believe there is a need to remove some of the overly development oriented language in some of the provisions, since Tribe's routinely designate forested lands for purposes other than intensive forest management. We hope you will consider our proposed changes.

Thank you very much for holding hearings on S1289 and for addressing the needs of Indian tribes with forestry resources.

Sincerely yours:

Dale Risling, Tribal Chairman
Hoopa Valley Business Council

CC: Honorable Pete Wilson

enclosure

DR/GB/gb

STATEMENT OF JERRY L. ROGERS, ASSOCIATE DIRECTOR, CULTURAL RESOURCES, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, ON S. 1021 AND S. 1980.

May 14, 1990

Mr. Chairman, I appreciate the opportunity to appear before the committee to discuss S. 1021 and S. 1980's, treatment of human remains, funerary objects, sacred objects, and objects of Native American patrimony from archeological sites.

The Administration has not had an opportunity to thoroughly review the draft substitute for S. 1980 recently developed by committee staff. Thus, the Administration cannot take a position on the legislation until an interagency review is completed. A report outlining the Administration's views will be available early this summer. I would note that in March, Secretary Lujan directed the National Park Service to develop a new policy and revise an existing guideline on the treatment of human remains and funerary objects. The Park Service has been working informally at the staff level for over a year on a review of the current policy and guideline. This informal review has included meetings with representatives of Indian groups, as well as with archeological and museum groups.

Secretary Lujan wants a more sensitive treatment of archeological human remains, funerary objects, sacred objects, and objects of Native American cultural patrimony by managers of Interior lands. He wants other Federal, State and local agencies that look to the Secretary of the Interior for guidance to adopt similar sensitive approaches. The specifics of the Interior policy and guidelines remain to be defined following more detailed consultation with Indian, archeological, museum, and other interested groups. However, the Secretary has indicated that he wants to affirm the rights of Tribes to determine the treatment that is afforded human remains and associated objects that are affiliated clearly with the Tribe.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to answer any questions you may have.

Jack Ferguson Associates, Inc.

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Washington, D.C. 20002
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Fax (202) 544-5763

Statement by Sotheby's, Inc.
and
the Antique Tribal Art Dealers Association, Inc.

on S. 1980

to be included
in the May 14, 1990
Hearing Record

Select Committee on Indian Affairs
United States Senate

Sotheby's, Inc. and Antique Tribal Art Dealers Association, Inc., have reviewed the Native American Grave Protection and Repatriation Act (S. 1980) pending before the Select Committee on Indian Affairs and look forward to testifying on this matter at future hearings. We will highlight our concerns with S. 1980 in this statement, with the intention of submitting a more complete assessment of the bill at a later date.

In general, we are concerned that S. 1980 as presently drafted is too broad in its application and ambiguous as to its interpretation. We particularly are concerned with the provision designed to prohibit the sale, use for profit, or transport for sale or profit of any Native American sacred objects or items of Native American cultural patrimony. We want to make clear for the record that we are not opposed to the part of this provision pertaining to Native American human remains or funerary objects (objects associated with burial). In this regard, we agree with the authors of this legislation that Native American human remains should be treated with respect and returned to their proper place of origin.

It has been our experience that sacred or ceremonial objects, such as masks, or wedding baskets, have been made by Indians for the express purpose of selling those objects in the tourism trade. For instance Navajo Indians manufacture wedding baskets for the express purpose of selling them to tourists or other interested purchasers after the wedding ceremonies. The tourism trade for Native American Indians began hundreds of years ago. Thus, many Indian arts and crafts were created with the intent to sell such objects and purchasers acquired them with knowledge and consent of the Native Americans. How will the Congress determine which Native American items in private ownership were solely sacred and ceremonial or which were made for sale and sold generations ago with the consent of the then owners?

We are also concerned about the treatment of excavated Native American objects that were legally acquired by bona fide purchaser prior to the enactment of this legislation. S. 1980 as currently drafted would prohibit such persons from selling or otherwise disposing of their objects until they receive written consent from the descendants (if such are known) of the Native Americans who made the item. We suggest that it is unfair to impose a burden on the private owner of the Native American object to search for the descendant (if any) and further believe that the restrictions on the possession and sale of such property would greatly diminish the value of the object, legally purchased in good faith, and might, in fact, render it worthless. This would constitute an unjust, unfair taking of property without compensation to the private owner who acted in good faith.

Finally, the ambiguous definitions in this legislation would cover vast amounts of art works, which we do not believe is the intent of this legislation. For example, the bill would cover objects that may have been used for religious or ceremonial purposes many years ago, but no longer have the same meaning because such practices change over time. This bill would prohibit the rightful owners of such ceremonial items -- items which have lost their religious significance -- from disposing of them as they see fit.

We look forward to expressing our views to the Senate Select Committee on Indian Affairs in greater detail. We appreciate the committee taking our views into consideration as you continue to revise S. 1980.

TESTIMONY OF
Elizabeth Tatar, Ph.D., Anthropologist and Chairman, Anthropology Department, Bishop Museum, Honolulu, Hawai'i, before the Select Committee on Indian Affairs, of the Senate of the United States of America, May 14, 1990

Mr. Chairman, thank you for the opportunity to testify on the draft proposal S.1980 which provides legislation for the repatriation of Native American remains, funerary objects, and cultural patrimony.

I am Elizabeth Tatar, Anthropologist and Chairman of the Anthropology Department of Bishop Museum, Honolulu, Hawai'i. The following statement was prepared by myself in consultation and agreement with Dr. W. Donald Duckworth, President and Director of Bishop Museum.

As a staff member of the Museum's Anthropology Department for the past 13 years, I am most familiar with the problems and concerns of the Native Hawaiian community as they relate to the Museum's collections. Bishop Museum has always strived in its more than 100 year history to maintain a good working relationship with the Native Hawaiian community, and actively continues to seek ways to improve these relationships. The Museum was in fact established in honor of a Native Hawaiian chief, Bernice Pauahi Bishop, the last descendant of the Kamehameha dynasty, as a repository for Hawaiian and Pacific cultural and natural history. The Museum staff has, on the whole, regards the founding collections as well as Hawaiian materials they themselves collect, preserve, and study as held in trust for the Native Hawaiian community. Indeed, Native Hawaiian materials make up the great majority of our collections. We therefore support the intent of this Act, as it generally reaffirms the unquestionable responsibility of museums to the communities they serve, both as repositories of the communities' cultural patrimony and as recipients of their support, be it financial or moral, and as it specifically gives Native Hawaiians control over the collection, study, and display of the most culturally sensitive material in Museum collections: the skeletal remains of their ancestors and sacred objects.

Repatriation is not new to Bishop Museum. Human remains as well as items of cultural patrimony have been repatriated upon request for several years to both Native Hawaiians and Pacific Islanders. For example, some 375 Hawaiian burials have been released for reburial and some 250 are in the process of being released. The Museum is comfortable with the process guiding these releases. This process is coordinated by the Hawai'i State Historic Preservation Office of the State Department of Land and Natural Resources in ways that ensure that the reinterment plans meet all legal and regulatory requirements, and are agreeable to all concerned.

Until recently analysis was usually conducted on the skeletal remains to be reburied. Analysis on the collections of human remains from now on will be carried out only with the agreement of the appropriate Hawaiian organizations, a procedure guided by recently passed Hawai'i State legislation. In the near future the Museum will be proposing the establishment of a special panel of representatives from the appropriate Native Hawaiian organizations to control access to the skeletal collections and to particularly sensitive and sacred objects.

The Museum has served and continues to serve as a State and Federal repository for human remains excavated and discovered by both Museum and non-Museum staff. The collections are stored and curated in the Museum by Museum staff. These collections of remains are not owned by the Museum, rather they were placed in the Museum on temporary loan. Of the approximately 2,590 Hawaiian human burials in the Museum collections, 1,230 belong to the United States Federal Government. These were removed from lands owned by the military branches and the National Park Service.

Conducting and maintaining collection inventories are basic museum responsibilities. Inventories of culturally sensitive materials are particularly important to have. We do not view the mandated inventories mandated by the proposed legislation as causing undue hardship. We realize that community access to all the Museum collections must be maintained, requiring that additional personnel be hired to provide the best available identifications of human remains, funerary objects, and sacred objects. We note with pleasure that the Act will provide the funds to do so. Indeed, we would welcome the opportunity to improve and increase the information in our existing collection inventories and catalogs to better serve the needs of the Native Hawaiian Community, which, in turn, will benefit the scientific community.

Although the language of the legislation, particularly in its description of the responsibilities of the Review Committee, may be construed to promote adversity rather than cooperation and mutual assistance in the process of repatriation, we do not believe it will result in the removal of all Hawaiian collections from Bishop Museum, nor do we view it as being necessarily detrimental to the scientific community. On the contrary, students of Native American collections in museums stand to learn a great deal more by being actively involved with Native Americans from the very start of their research projects. In the case of Bishop Museum, the legislation would formalize what already has been practiced, thereby ensuring greater and more meaningful involvement of the Native Hawaiian community in the Museum's future.

Thank you.

Attached: Questions and comments on specific wording in S.1980.

A few questions and comments on the wording of the May 7 draft of

S.1980 follow:

In Section 3, the definition of sacred object perhaps should include the phrase, "identified through available evidence" to parallel the definition for funerary object. In Section 4, the definitions of Ownership (p. 7) do not seem clear to me. Do the human remains refer to those excavated or discovered after the date of enactment on Federal and tribal lands or on any lands? Do the human remains and funerary objects "found," or should it be "excavated or discovered," on Federal or tribal land refer to those so found before the date of enactment of this Act? Is "found" different from "excavated or discovered?" On p. 8, there will probably be times when the particular "group" of Native Americans cannot be ascertained in the case of human remains and funerary objects. On p. 10, I wonder if the regulations governing the procedures for repatration will include procedures for requesting funds for identifications and inventories? If so, the inventory should be completed within 5 years of the provision of the regulations. On p. 11, a paragraph seems to be missing. On page 14, who determines and how is it determined that a scientific study would be of major benefit to the United States? In Section 6, Review Committee, will there be a process for grievances and/or appeals of the Review Committee's decisions? On page 15, does "unidentifable" refer to non-Native remains or Native American remains for which a particular group of Native Americans cannot be ascertained (cf. p. 8).

Respectfully submitted,

Elizabeth Tatar

Elizabeth Tatar, Ph.D.
Chairman
Anthropology Department,
Bishop Museum

BISHOP MUSEUM
CELEBRATING A
CENTURY OF DISCOVERY

July 23, 1990

The Honorable Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Senator Inouye,

Please find attached a review of current, past, and estimated future costs for the repatriation for reburial of human remains and associated burial goods.

This review was conducted in reponse to a request made to me by Senator John McCain at the May 14th hearings on the proposed amendment to S.1980. A review of estimated costs of conducting inventories of the anthropology collections, including the Hawaiian collections at Bishop Museum is included.

We hope this information will be useful to you and your committee.

Sincerely,

Elizabeth Tatar

Elizabeth Tatar, PhD
Chairman
Anthropology Department

Enc.

cc: W.D. Duckworth, President and Director, Bishop Museum
R. Paglinawan and L. Delaney, Office of Hawaiian Affairs
E. Ayau, Native Hawaiian Legal Corporation and Malama I Na Kupuna O Hawai'i Nei
W. Paty, State of Hawai'i Department of Land and Natural Resources
D. Hibbard, Hawai'i State Historic Preservation Office

The State Museum of Natural and Cultural History
1525 Bernice Street • P.O. Box 19000A • Honolulu, Hawai'i • 96817-0916
Telephone: (808) 847-3511 • Fax: (808) 841-8968

BISHOP MUSEUM

Honolulu, Hawai'i

REVIEW OF

I COSTS OF CURRENT REPTRATIATION REQUESTS

II COSTS OF REBURIALS COMPLETED WITHIN PAST 10 YEARS

III ESTIMATED COSTS FOR REPATRIATING HUMAN REMAINS AND ASSOCIATED BURIAL GOODS FOR REBURIAL

IV COSTS OF PREPARING AN INVENTORY OF THE ANTHROPOLOGY COLLECTIONS, INCLUDING THE HUMAN OSTEOLOGY COLLECTION

Prepared by
E. Tatar, Chairman
Anthropology Department
July 20, 1990

I. COSTS OF CURRENT REPATRIATION REQUESTS

A. Ka Lae, Hawai'i Island (97 Individuals)*

Requests:

(1) Letter of November 17, 1988, from community organization 'Ohana o Ka Lae, requesting number and identification of individuals and associated burial goods from Ka Lae, Hawai'i Island. Several letters were exchanged relating to the request.

(2) Letter of December 7, 1989, from State Historic Preservation Office requesting extensive responses to 10 complex questions in preparation for reinterment plan.

Summary of Activities:

Meetings and tours with 'Ohana o Ka Lae representatives, documentation search (catalog and available field records) and verification, descriptions ofpast research (metrical, morphological, pathological, cultural analysis), verification of research results, literature search (publications and unpublished reports) and description, database search, database update and editing, administrative meetings, phone calls, consultations, letters, draft report, report revisions, final report with summary of research, including photographs and map. Final report submitted to State Historic Preservation Office (SHPO) March 20, 1990. SHPO response pending. Project continuing.

Salary Expenses**		
Archaeologist/Chairman (YS) 100 hrs @ 28.62/hr	$2,862	
Coll. Mgr. (TH) 20 hrs @ 14.76/hr	295	
Coll. Tech. (JD) 180 @ 8.14/hr	1,465	
Coll. Tech. (TY) 70 @ 9.40/hr	658	
Res. Asst. (EJ) 10 @ 15.03/hr	150	
Res. Asst./database mgr. (EK) 77 @ 15.8/hr	1,223	
Volunteers 13 hrs @ 8.14/hr	838	
		$ 7,491
Overhead costs (79.3%)#	5,940	
Total salary expenses		$13,431
Non-salary Expenses		
Telephone/fax (Hawaii Is, Mainland, Japan)	50	
Materials/supplies	30	
Photographs	30	
Photocopies	20	
Computer costs	50	
Total non-salary expenses		$ 180
TOTAL COSTS TO DATE		$13,611
COST PER INDIVIDUAL		$ 140

B. Kaua'i (75 Individuals)*

Request:

Verbal request October 28, 1989, by La France Kapaka, Chairman of Kaua'i Burial Council, to Bishop Museum Director for list of localities on Kaua'i from which human remains came to Bishop Museum.

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* Numbers represent a minimum number of individuals.

** All museum salaries in this document include 20% FICA/fringe.

# Overhead incudes work of the museum director, assistant directors, non-anthropology advisory and support staff, secretarial support, facility costs, and other administrative costs.

Summary of Activities:

Documentation (catalog and available field records) search and verification, database search, database update and editing, organization and compilation of documentation. List sent November 16, 1989. Response pending. Project continuing.

Salary Expenses		
Coll. Mgr. (TH) 4 hrs @ 14.76	$ 59	
Coll. Tech. (JD) 21 hrs @ 8.14	171	
Res. Asst/database mgr. (EK) 1 hr @ 15.80	16	
Chairman (YS) 1 hr @ 28.62	29	
		$ 275
Overhead costs (79.3%)	218	
Total salary expenses		$ 493

Non-salary Expenses		
Materials/Supplies	$ 10	
Photocopies	5	
Computer Costs	10	
Total non-salary expenses		$ 25
TOTAL COSTS TO DATE		$ 818
TOTAL COST PER INDIVIDUAL		$ 11

C. Moloka'i (47 Individuals)*

Request:

Letter of January 19, 1990, from Edward H. Ayau, Esq., representing the community reburial organization Hui Malama I Na Kupuna for inventory of remains of individuals and associated burial goods from Moloka'i. The initial request followed by several written and verbal requests for verification of associated burial goods, verification of inventory, and verification of identification as Moloka'i remains.

Summary of Activities:

Documentation (catalog and available field records) search and verification, literature (publications and unpublished reports) search and description, database search, database update and editing, organization and compilation of documentation, intensive searches in collections for associated burial goods, checking and revision of listing of remains, provision of definitions of terms and activities related to museum management of collection, administrative meetings, phone calls, consultations, letters. Revised list of remains sent April 23, 1990. Project continuing.

Salary Expenses		
Colls. Mgr. (TH) 14 hrs @ 14.76/hr	$ 206	
Colls. Tech. (IY) 35 hrs @ 9.40/h	329	
Colls. Tech. (VB) 7 hrs @ 9.30/hr	65	
Res. Asst. (EJ) 3 hrs @ 15.03	45	
Res. Asst./database mgr. (EK) 2 hrs @ 15.80	32	
Chairman (ET) 5 hrs @ 21.16/hr	106	
Volunteers 6 hrs @ 8.14/hr	49	
		$ 832
Overhead costs (79.3%)	660	
Total salary expenses		$ 1,492

* Numbers represent a minimum number of individuals.

Non-salary Expenses		
Materials/supplies	$ 25	
Photocopies	10	
Computer costs	25	
Total non-salary expenses		$ 60
TOTAL COSTS TO DATE		$ 1,552
TOTAL COSTS PER INDIVIDUAL		$ 33

II. COSTS OF REBURIALS COMPLETED WITHIN PAST 10 YEARS

780 individuals recovered from archaeology projects have been reburied. All projects resulting in the recovery and reburial of human remains resulted in reports, and some projects resulted in publications. The majority of the costs of the reburials were paid for by the contracting agency. Most of the remains were either fully or partially analyzed by a qualified scientist.

The average cost of reburial of the 780 individuals was $342/individual.

The archaeology project at Keopu, Hawai'i Island, contracted by the State of Hawai'i Department of Transportation (1982-1985), resulted in the full excavation and recovery of 355 individuals and 613 associated burial goods. Complete forensic analysis was conducted on the remains, and the burial goods were analyzed. All the remains and burial goods were reburied in specially made wooden caskets with full ceremony. The project resulted in extensive documentation as well as a publication, *Moe Kau a Ho'oilo* by T.L. Han, S.L. Collins, S.D. Clark, and A. Garland (Bishop Museum DRS 86-1, 1986) resulted.

The cost of reburial, including analysis, of the Keopu project was $150,980 or $425/individual.

III. ESTIMATED COSTS FOR REPATRIATING HUMAN REMAINS AND ASSOCIATED BURIAL GOODS FOR REBURIAL

The costs of repatriating human remains and associated burial goods are presented as (1) minimal costs and (2) additional costs. These two levels of costs are based on recent experience with requests for repatriation (see above).

(1) The minimal services provided by Bishop Museum for repatriating human remains requested by a community organization or lineal descendants are:

(a) A list of the number of human remains and associated burial goods either from an island or from a particular district of an island.

A list is generated by trained technicians from a computerized inventory database. The list is based on catalog numbers (usually, but not always equivalent to a discrete individual) and contains the following information: accession number or temporary loan number; storage container number; date collected; donor or collector; method of acquisition (gift, collected by research staff); island, district (if known), and area (if known) where collected; completeness of skeletal remains (if known); age, sex, and race (if known). The information on the list is verified with the actual remains on the shelf and with the original field notes (when available), and accession forms. Additional information concerning the remains and the associated burial goods is searched from related documents in the museum's archival collections. The estimated cost for such a list is $35/individual.

(b) The skeletal remains to be repatriated will be removed from the storage area, packed in cardboard containers using standard museum collection management supplies and methods, and prepared for shipping (including the processing of appropriate documents).

Museum staff is expected to work closely with the requesting group in preparing the remains for removal from the museum. Although museum staff is responsible for providing access to the human remains, the actual packing may be performed by the requesting group.
The estimated cost for packing is $35/individual, including supplies.

(c) If the skeletal remains and associated burial goods resulted from systematic archaeological research and excavations, a summary of the research information, including information on how and where the remains and burial goods were originally interred, will be provided.
The estimated cost for a report summarizing past archaeological research is $75/individual.

(d) If the skeletal remains were analyzed by physical anthropologists, and the resulting information is desired by the requesting group, the information will be summarized in a report.
The estimated cost for a report summarizing past physical anthropological research is $75/individual.

The estimated minimum costs for repatriation of human remains and associated burial goods is
$ 70/individual without past research summary,
$145/individual with either past archaeological or past physical anthropological research summary,
$220/individual with both past archaeological and past physical anthropological research summaries.

(2) Additional services may be requested of Bishop Museum by the community organization, lineal descendants, and the State Historic Preservation Office prior to repatriation. Any or all of the following services may be provided.

(a) Minimal physical examination (metrical and morphological) according to Assocation of Physical Anthropologists (APA) and Society for Hawaiian Archaeology (SHA) standards to determine discrete individuals, completeness of skeletal remains, and, if diagnostic skeletal remains are available, the individual's age, sex, and probable race.
$150/individual

(b) Comprehensive forensic examination, including metrical, morphological, and pathological analysis.
$250/individual

(c) Additional research involving DNA extraction and analysis (including genetic, nutritional, pathological analysis).
$225/individual

(d) Comprehensive ethnographic and historical research of associated burial goods, including description, analysis, and synthesis of resulting data.
$145/specimen

(e) Tapa wrapping, including shipment of tapa.
$65/individual

(f) *Lauhala* (pandanus) woven caskets.
$50/individual

(g) Wooden (pine) caskets.
$40/individual

(h) Professional packing according to museum standards (construction of compartments for stabilizing remains during shipment; wrapping and cushioning with chemically inert materials; construction of wooden crate

to hold six standard osteology collection storage boxes).
$40/individual

(i) Shipping via air overnight with ground transportation (based on transporting 100 individuals from Bishop Museum to South Point, Hawai'i Island, via UPS).
$500/100 individuals

IV. COSTS OF PREPARING AN INVENTORY OF THE ANTHROPOLOGY COLLECTIONS, INCLUDING THE HUMAN OSTEOLOGY COLLECTION

A recently completed physical inventory of the anthropology collections resulted in the following numbers of items in the Hawaiian collections:

27,900	Hawaiian ethnographic and historical collection
76,100	Hawaiian archaeological collection
2,590	Hawaiian human osteological collection
5,300	Hawaiian audio-recording collection
111,890	Total Hawaiian collections

The Hawaiian collections comprise 60% of the total 187,040 items in all the anthropology collections.

The archaeology and human osteology collections were inventoried in 1984-1987; the audio collections were inventoried in 1986-1988; the ethnographic and historical collections were inventoried in 1988-1990. The inventories of the human osteology, parts of the archaeology, the audio collections, and the ethnographic and historical collections were computerized in 1986-1990. The maintanance and updating of the inventories are ongoing.

The cost for completing the inventories, including computerization of the inventories, of the anthropology collections was about **$1,650,500 averaging $8.82/item.** The costs for each of the collection inventories were $183,700 for the audio collection ($25.16/item); $545,000 for the archaeology collections ($5.22/item); and $788,000 for the ethnographic and historical collections ($10.96/item). The cost for completing the inventory of the human osteology collection was about **$133,800 or $40.06/individual.***

The goals of the anthropology collection inventories were to
- identify each item in the collection with a unique catalog number and accession number
- determine the actual number of items in the collections
- identify the storage location of each item
- describe the condition of each item
- identify the type and geographic origin of each item based on existing catalog information

The inventories were conducted in two stages: first, data was entered from the existing catalog documenting the collection, and second, data was entered from an actual physical inventory of the storage areas. Two databases were created and then compared. The discrepancies resulting from the comparison (e.g., there were more objects on the shelves than recorded in the original catalog) have for the most part been resolved. Deficiencies in storage conditions were resolved during the inventories as well.

* The comparatively low per-item cost of the anthropology collection inventory is due to the archaeology collections. The archaeology collection consists of 104,500 systematically collected artifacts, many of which were collected in large lots, such as stone adzes, and nearly all of which were systematically documented in the field. Conducting the inventories of both the audio and osteology collections took considerably more time due to the lack of systematically collected documentation, and involved significant costs in collections management supplies (preservation copies, storage containers).

The next major objective in the collections management plan for Bishop Museum's anthropology collections is to create a computerized catalog, which will include information from the inventory plus information identifying the donor/collector, cultural associations and functions, aboriginal names, methods of construction, identification of raw materials, and other pertinent cultural data. The quantity and quality of this kind of information in the existing catalogs depends on the quality of systematic research demonstrated by the scientist who studied the collection.

The quality of the existing catalogs is inconsistent. Parts of the catalogs, for example, have been significantly improved through the research of a professional anthropologist. Parts remain insufficiently documented. Significant strides, however, have been made. Comprehensive computerized catalogs have been updated and completed for the audio collection and the Japanese immigrant collections. The cataloging of both these collections was carried out by professional anthropologists and ethnohistorians. Parts of the Hawaiian ethnographic, historical, and archaeological collections catalog have been manually completed according to acceptable museum standards.

The information contained within the human osteology catalog does not conform to APA/SHA standards. For example, the lack of consistent metrical measurements and morphological idenfications makes it impossible to accurately determine the number of individuals, their age, sex or probable race in the collection. This information can only be provided by a trained physical anthropologist (the museum does not include a physical anthropologist on its staff) and would cost $150/individual (see above). Because of the moratorium on research requested by both Hui Malama I Na Kupuna o Hawai'i Nei and the Office of Hawaiian Affairs, which the museum is honoring, such information may not be possible to obtain. The museum is working with the Office of Hawaiian Affairs to reach ways in which some of these problems can be resolved in a way agreeable to all concerned.

MUSEUM OF NORTHERN ARIZONA

7 June 1990

The Honorable John McCain
United States Senate
210 Hart Senate Office Building
Washington, DC 20510

Dear Senator McCain:

Thank you for the opportunity to speak before the Senate Select Subcommittee on Indian Affairs. It was a most interesting experience for me and, I hope, helpful for the committee as well.

I have reviewed the data necessary to arrive at some answers to the questions you asked of me and the following are my best-effort responses based on those data.

I. The Museum of Northern Arizona has 1,194 physical remains in its collections. The legal ownership is varied, but it is interesting to note that only 13%, or 158 of the 1,194, "belong" to the Museum. The remaining 87% (1,036 remains) "belong" to the Federal government directly or indirectly. [See attached Agency Summary.]

II. Any exact estimate of the cost necessary to effect a proper inventory sufficient for identification purposes is inexact at best at this time. I can only offer estimates. These are as follows for the Museum of Northern Arizona:

A. Physical Remains - Some will be easily defined but others will require expert consultants and much data-gathering.
1,194 remains @ $600/ea = $716,400

B. Catalogued Anthropology Collections - Our current, established rate for a per-item inventory is $30 per specimen.
200,000 catalogued specimens @ $30/ea = $6,000,000

C. Bulk Storage, Uncatalogued - There are 30,000 cubic feet of bulk anthropological collections. These collections would require much more time since they are not currently catalogued. Current estimate is for four hours per cubic foot, which would result in approximately 30,000 new catalogue entries as well.
30,000 cu ft x 4 hrs @ $15/hr = $1,800,000

ROUTE 4, BOX 720, FLAGSTAFF, ARIZONA 86001, (602)774-5211

D. Overhead - The Museum's National Science Foundation (NSF) overhead rate is 32%. This covers utilities, equipment, administration, finance office, and contingencies.
$8,516,400 (direct costs) x 32% = $2,725,248

Total = $11,241,648

As you can see, this is a substantial number. It appears to me that I was correct when I said in testimony that requiring museums to accomplish an inventory without providing Federal funding would indeed bankrupt many of us. Certainly it would be the case for the Museum of Northern Arizona.

There is one bit of good news in this, however, and that is that the Museum of Northern Arizona has one of the largest holdings in these areas in the country so this will not likely be an average cost for each institution. Additionally, there is always the option of providing funding over a multi-year period - five years?

Finally, I would be remiss if I did not point out that our Anthropology collection - like the human remains - are to a significant degree owned by the Federal government (MNA is an approved Federal repository). Consequently, a last resort option might be for us to simply return the collections to the government. We would hate to do this for a number of reasons: (1) the Federal agencies are not leaders in this field and do not have the physical facilities to assume these collections; (2) Federal holdings would tend to centralize collections away from their original localities thus making access and research more difficult; (3) this would devastate the holdings of many museums for research, education, and exhibition.

I hope this is helpful to you and the committee in your deliberations on this very important subject. I know that I and the museum community would be happy to help resolve this matter. Please let me know if there is anything else that can be done.

Sincerely,

Philip Thompson

Philip M. Thompson
Director

Attachment

cc:
Senator D. Inouye
E. Eberhard
S. Heeley

MNA HUMAN REMAINS COLLECTION AGENCY SUMMARY

	Sites	Complete Human Burials	Complete Human Bones
Private	35	103	22
State of Arizona	18	45	12
Yavapai County	1	3	-
City (Williams, Phoenix)	2	5	1
National Forest	72	421	50
National Parks	5	6	2
National Monuments	13	110	2
National Recreation Area (Glen Canyon)	7	17	-
National Park Service	1	1	-
Indian Reservations/BIA	126	446	63
Bureau of Land Management	21	35	27
Unknown	3	2	1
Subtotals			
Indian Reservations/BIA		446 (37%)	
Direct Federal		590 (49%)	
Total Federal with Reservations/BIA		1,036 (87%)	
Museum/Private		158 (13%)	
TOTALS	304	1194	180

Narragansett Indian
Archaeological — Anthropological
Committee
P.O. Box 105
Wood River Junction, Rhode Island 02894

1990 MAY 31 AM 9 12

29 May 1990

Committee Members

Lloyd G. Wilcox
Tribal Medicineman, Ex-officio

John B. Brown III
Understudy to Tribal Medicineman
Tribal Archaeological Representative
Chairman

Ella W.T. Sekatau
Tribal Ethno-Historian
Tribal Genealogist
Secretary

Gladys W. Brown
Tribal Member
Treasurer

Lucille S. Dawson, Ph.D.
Tribal Historian

Valeena P. Thomas
Tribal Elder

Honorary Members

Paul Robinson
State Archaeologist

Marc Kelly, Ph.D.
Dept. of Sociology & Anthropology
University of Rhode Island

E. Pierre Morenon, Ph.D.
Dept. of Anthropology & Geography
Director, Public Archaeology Program
Rhode Island College

Alfreda B. Strong, B.A., B.S.
Teacher
Tribal Member

Senator John McCain, Vice-Chairman
Senate Select Committee on Indian Affairs
United States Senate Building
Washington, D.C. 20510 - 6450

Honorable Sir,

We have read the proposed amendment to S.1980. In reading the said amendment, we fully support it as written. We found no needed changes, as all issues were addressed in the proposed amendment.

We thankyou for the time to comment on this issue.

Sincerly,

John Brown, Chairman,
Understudy to Narragansett
Indian Tribal Medicineman

(401) 364-9832

THE SAN CARLOS APACHE TRIBE
P.O. Box O
San Carlos, Arizona [illegible]
(602) 475-2361

BUCK KITCHEYAN
Chairman

[illegible]
Vice Chairman

1990 [illegible]N -1 AM 10:47

May 22, 1990

Senator John McCain
111 Senate Russell Office Building
Washington, D.C. 20510-0303

Dear Honorable McCain:

The San Carlos Apache Tribe is in support of action taken by the Inter Tribal Council of Arizona by resolution titled "Support for S. 1980" and S. 1021 on Return of Indian Remains and Grave Goods. These bills will give the basic rights to American Indians to practice their religious rites, to take care of remains and grave goods.

Your continued support is appreciated.

Respectfully,

Buck Kitcheyan
Chairman

SRP

SALT RIVER PROJECT
POST OFFICE BOX 52025
PHOENIX, ARIZONA
85072-2025
(602) 236-5900

May 31, 1990

The Honorable John McCain
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Attn: Mr. Steve Heeley

Dear Senator McCain:

The Salt River Project (SRP) has recently reviewed the proposed amendment to S. 1980 and are pleased with many of the changes. We feel this amendment will take into consideration both the North American concerns and those of the scientific community and public interested in learning more about the heritage of our country.

Section 4 has the potential to become an important means to stopping the insensitive looting of graves which we strongly support. There are, however, several issues that we are concerned about. Section 4(c)(2) (pg. 11) requires that the culturally affiliated Native American group must be notified prior to the disturbance of any human remains. At SRP any removal of human remains on our projects are undertaken by professional archaeologists, and as the result of planned construction projects. In many cases we won't be able to identify the cultural affiliation of the remains until after the archaeological excavation and analysis. This subsection would create difficulties in trying to comply with it when the affiliation of the human remains is not previously known. Possibly excavation could be undertaken by a permit issued under existing State laws or the Archaeological Resources Protection Act of 1979.

If the affiliation can be determined prior to the excavation, once we have contacted the appropriate Native American group, is there a time limit for their response before we may proceed with the excavation? Lengthy response times may create construction schedule delays and additional expenses.

Another issue that needs to be addressed is what will happen if a human burial is discovered or accidentally disturbed during construction? We have always tried to anticipate any archaeological and human remains that may be impacted; but should an accidental disturbance occur will the project be allowed to proceed as long as an archaeologist is immediately contacted to remove the remains and the appropriate Native American Group contacted at a later date?

We strongly support Section 4(d)(1) that deals with the selling of, or profiting from, human remains. We are concerned that legitimate scientific and educational activities should not be considered as groups that "profit." If there is some way to clarify this section so that these legitimate activities are excluded, it should help avert future misunderstandings.

We also have a question about Section 5(b)(2) (pg. 16, line 15): does the comment "or other site," refer to burial sites, or any sites? It appears that the intent is burial sites, but it is not clear.

Thank you for the opportunity to comment on this bill. If you have any questions on our comments, please feel free to contact me at (602) 236-2826, or our Staff Archaeologist, Judy Brunson, at (602) 236-2618.

Sincerely,

Gary S. Small

Gary S. Small
Manager
Environmental Management Services

cc: C. Foley

Confederated Tribes and Bands
of the Yakima Indian Nation

Established by the
Treaty of June 9, 1855

M E M O R A N D U M

TO: Senator McCain DATE: May 30, 1990

FROM: Lavina Washines, Secretary
Cultural Committee

RE: SENATE BILL 1021-NATIVE AMERICAN GRAVE AND BURIAL PROTECTION ACT

On May 14, 1990, the Senate Select Indian Affairs Committee held a hearing on the above-entitled Legislation. The purpose of the hearing was to take evidence and comments regarding the purpose and extent to which Congress will legislate in this area. It is my understanding that the Yakima Nation still has an opportunity to provide written comments to the Senate Select Committee, by and through our own Congressional delegation and Senator Daniel Inouye.

I offer the following comments to Senate Bill 1021:

1. For purposes of this Act, the term "Tribal land", which is defined in Section 3(4)(A), should include all aboriginal lands occupied or otherwise used by any tribe, band, nation, or recognized group of Indians.

The purpose of adding the above language is to ensure that the skeletal remains, associated grave offerings and sacred ceremonial objects will be extended the maximum protection from interference or loss. Many Indian remains may be found outside of the boundaries of an Indian reservation. It only makes sense to include the aboriginal properties within the definition of tribal land as used in Senate Bill 1021.

2. Pursuant to section 4(a) of the Act, the unauthorized transportation of remains from state to state is made unlawful. This section should be amended to make the transportation of such remains across reservation boundaries unlawful as well.

The purpose of this amendment would be to declare unlawful the transportation of remains from within a reservation or other tribal land, as defined by the Act, to any state sharing a common border with a tribe. As the Act now reads, such activity would not be a violation of federal law. If the transportation of remains across common tribal/state boundaries were also made a violation of federal law, it would give a tribe greater control over the protection of such objects from damage, destruction or loss.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

3. I also recommend that the scope of the Act be enlarged to Include private individuals and corporations. I believe that Congress has the authority to require that persons or corporations possessing such remains to register with the federal government. Such registration would put a tribe on notice that the remains and objects are in the possession of such individuals and/or corporations, and would allow a tribe the opportunity to obtain such remains through private channels.

4. Finally, the Act, as a currently drafted, provides no protection for grave sites and/or sacred grounds which are known to exist, or have already been subject to prior archaeological excavation or exploitation. In short, the Act protects the remains after they have been removed from the grave site and/or sacred ground. It does nothing to protect the remains and/or objects against excavation and exploitation. Therefore, this office recommends that a section be added to the Act which will protect such grave sites and sacred grounds by prevention of archaeological excavation and/or exploitation. To this purpose, we have attached two chapters of the Revised Code of Washington, which does provide some protection for grave sites and sacred grounds.

I hope that this will be of some assistance to you. If we can be of further assistance to you in this matter, please do not hesitate to call.

Lavina Washines

'Is there nothing sacred anymore?'

Vandals desecrate cemetery

By CHARLES LAMB
Herald-Republic correspondent

AHTANUM — Memorial Day 1990 will bring an extra measure of sadness to Yakima Tribal members with famous ancestors and beloved family members buried in historic Yemowat Indian Cemetery, located in a remote area on the north side of Ahtanum Ridge.

During their visitations Monday, families will see appalling evidence of vandalism like that which has occurred several times in the past few years.

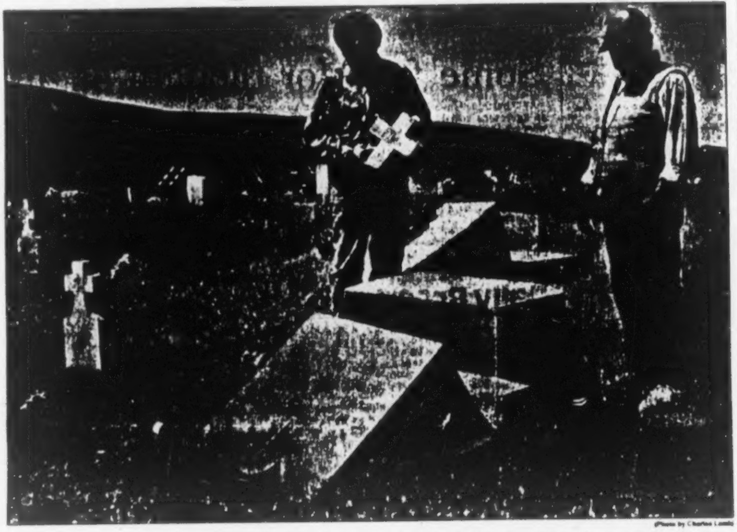
Tribal volunteers have been busy resetting tombstones maliciously overturned since last Memorial Day, and picking up an accumulation of beer and soft drink containers and other debris left behind by parties unknown.

Although reset, the granite monuments show chips and cracks from being knocked over. Crosses and other figures have have been broken off the tops of stones and left lying or carried away.

"It's hard to restore the stones so relatives won't notice damage and have their day spoiled for them," said volunteer Alvin (Shadow) Schuster of North Campbell Road, Wapato.

Schuster, 46, and his cousin and close friend, Louis Kishwalk, 50, said they are tired of coming out to the cemetery every year to clean up debris and straighten up vandalism to spare the feelings of living relatives. They believe the vandalism to be the work of young non-Indians badly in need of parental guidance.

"Is there nothing sacred anymore?" asked Kishwalk's sister, Charlotte Kahclamat who, with her daughter, Candice, 11, was tidying up around the grave of Louis' and Charlotte's mother, Christine Wallamet, who died in 1984. The small girl had one arm in a sling from a recent mishap, but raked vigorously with the other.


(Photo by Charles Lamb)

Gravestones wantonly overturned and damaged in Yemowat Indian Cemetery below Ahtanum Ridge are inspected by Alvin Schuster, left, and Louis Kishwalk of Wapato. The men worked to restore damage before Memorial Day.

Charlotte was shocked to see a large ceramic saddle on the grave of another woman she knew had been used as a target for rifle or pistol practice, as had several nearby gravestones. In lieu of well-kept lawns in non-Indian cemeteries, Yakimas let natural grasses grow and decorate the mound with artifacts, such as the ill-fated ceramic saddle which identified the woman as a rider of horses.

"We cry the loudest because some of more than 200 people buried in Yemowat were great 19th-century Indian leaders," Kishwalk said. "We're descendants of leaders involved in treaty signing. We're proud of them."

"We're also proud of Yakimas who served the country bravely in times of war. Their graves also merit respect," Schuster added.

Untouched as yet by vandals is the headstone of William Tee-I-As, son or grandson of Chief Owhi and believed a signator of the Indian Treaty of 1855. Tee-I-As died Dec. 22, 1906. James Yemowat died Sept. 14, 1897, at 83, after donating land for the burial site. Louis Mann, buried there in 1908, had testified in Washington, D.C., in the 1890s against irrigation policies on the Yakima Reservation in Yakima Valley. Kishwalk, a descendant, said Mann fought the government in courts and was so outspoken his critics called him "The Bad Injun of Ahtanum."

Schuster and Kishwalk, both of the Washat, or Longhouse religion, said Indian children are raised to respect other peoples' religions and ways of burying their dead. "Why can't other people's kids respect ours?"

"There are laws against grave desecration and violators should be punished to the fullest extent of the law," Schuster said, adding "The welfare state of today has taken away the right of parents to discipline or punish."

The two middle-aged Yakimas said a tribal "whipman" would come around when they were young to help parents discipline their children and teach them respect for others' property and for their elders. "He whipped us just hard enough to keep us in line," Kishwalk recalled.

"Maybe it's time to bring the whipman back," Schuster said. "Only this time not just for Indian kids."

CHAPTER 27.44—INDIAN GRAVES AND RECORDS

Section
27.44.030. Intent. [New]
27.44.040. Protection of Indian graves—Penalty. [New]
27.44.050. Civil action by Indian tribe or member—Time for commencing action—Venue—Damages—Attorneys' fees. [New]
27.44.900. Captions not law—1989 c 44. [New]
27.44.901. Liberal construction—1989 c 44. [New]

27.44.010. Repealed by Laws 1989, ch. 44, § 12

27.44.020. Examination permitted—Removal to archaeological repository

Any archaeologist or interested person may copy and examine such glyptic or painted records or examine the surface of any such cairn or

grave, but no such record or archaeological material from any such cairn or grave may be removed unless the same shall be destined for reburial or perpetual preservation in a duly recognized archaeological repository and permission for scientific research and removal of specimens of such records and material has been granted by the state historic preservation officer. Whenever a request for permission to remove records or material is received, the state historic preservation officer shall notify the affected Indian tribe or tribes.

Amended by Laws 1985, ch. 64, § 1.

Historical and Statutory Notes

1985 Amendment. Rewrote the section.

27.44.030. Intent

The legislature hereby declares that:

(1) Native Indian burial grounds and historic graves are acknowledged to be a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Washington. The legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state;

(2) There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;

(3) There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;

(4) Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected and it is therefore the legislature's intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration.

Enacted by Laws 1989, ch. 44, § 1.

27.44.040. Protection of Indian graves—Penalty

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe. The expenses of reinterment are to be paid by the office of archaeology and historic preservation pursuant to RCW 27.34.220.

(2) Any person who sells any native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave, is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves, or artifacts that were removed from cairns or graves as may be authorized by RCW 27.53.060 or by other than human action; or

(b) Actions taken in the performance of official law enforcement duties.

(4) It shall be a complete defense in the prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged

acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains, glyptics, or painted records, or artifacts accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

Enacted by Laws 1989, ch. 44, § 2.

27.44.050. Civil action by Indian tribe or member—Time for commencing action—Venue—Damages—Attorneys' fees

(1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof, shall have a civil action to secure an injunction, damages, or other appropriate relief against any person who is alleged to have violated RCW 27.44.040. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the superior or tribal court of the county in which the grave, cairn, remains, or artifacts are located, or in the superior court of the county within which the defendant resides.

(2) Any conviction pursuant to RCW 27.44.040 shall be prima facia[1] evidence in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may award reasonable attorneys' fees to the plaintiff;

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as the court sees fit, including the reinterment of human remains;

(c) The plaintiff shall recover imputed damages of five hundred dollars or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(d) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the office of archaeology and historic preservation for the purposes of Indian historic preservation and to cover the cost of reinterment expenses by the office; and

(e) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) If the defendant prevails, the court may award reasonable attorneys' fees to the defendant.

Enacted by Laws 1989, ch. 44, § 3.

[1] So in enrolled bill; should read "facie".

27.44.900. Captions not law—1989 c 44

Section captions used in this act[1] do not constitute any part of the law.

Enacted by Laws 1989, ch. 44, § 10.

[1] **Reviser's Note:** "This act" consists of the enactment of RCW 27.44.030, 27.44.040, 27.44.050, 27.44.900, 27.44.901, 68.05.410, and 68.05.420, the 1989 c 44 amendments to RCW 27.53.030 and 27.53.060, and the repeal of RCW 27.44.010.

27.44.901. Liberal construction—1989 c 44

This act[1] is to be liberally construed to achieve the legislature's intent.

Enacted by Laws 1989, ch. 44, § 11.

[1] **Reviser's Note:** For "this act" see note following RCW 27.44.900.

CHAPTER 27.53

ARCHAEOLOGICAL SITES AND RESOURCES

Section
27.53.010 Declaration.
NEW 27.53.020 Archaeological resource preservation, etc., declared public functions—Archaeological research center designated state agency—Cooperation enjoined.
NEW ~~27.53.030 Definitions.~~
27.53.040 Archaeological resources—Declaration.
27.53.050 Repealed.
NEW ~~27.53.060 Disturbing, etc., archaeological resource or site without permission unlawful—Exceptions.~~
27.53.070 Field investigations—Communication of site or resource location to research center.
NEW ~~27.53.080 Archaeological activities upon public lands—Entry—Agreement—Approval of activities.~~
NEW ~~27.53.090 Violations—Penalty.~~
NEW ~~27.53.900 Severability—1975 1st ex.s. c 134.~~

Cross References

Office of archaeology and historic preservation, see § 43.51A.010 et seq.

27.53.010 Declaration

The legislature hereby declares that the public has an interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources.

Added by Laws 1975, 1st Ex.Sess., ch. 134, § 1.

Library References

Health and Environment ⟹25.5.
C.J.S. Health and Environment §§ 61 et seq., 115 et seq.

CHAPTER 27.53—ARCHAEOLOGICAL SITES AND RESOURCES

Section
27.53.045. Abandoned archaeological resources—Declaration.
27.53.100. Historic archaeological resources on state-owned aquatic lands—Discovery and report—Right of first refusal.
27.53.110. Contracts for discovery and salvage of state-owned historic archaeological resources.
27.53.120. Recovery of property from historic archaeological sites—Mitigation of damage—Refusal to issue salvage permit to prevent destruction of resource.
27.53.130. List of areas requiring permits.
27.53.140. Rule-making authority.
27.53.150. Proceeds from state's property—Deposit and use.
27.53.901. Severability—1988 c 124.

27.53.020. Archaeological resource preservation, etc., declared public functions—Archaeological research center designated state agency—Cooperation enjoined

The discovery, identification, excavation, and study of the state's archaeological resources, the providing of information on archaeological sites for their nomination to the state and national registers of historic places, the maintaining of a complete inventory of archaeological sites and collections, and the providing of information to state, federal, and private construction agencies regarding the possible impact of construction activities on the state's archaeological resources, are proper public functions; and the Washington archaeological research center, created under the authority of chapter 39.34 RCW as now existing or hereafter amended, is hereby designated as an appropriate agency to carry out these functions. The director, in consultation with the Washington archaeological research center, shall provide guidelines for the selection of depositories designated by the state for archaeological resources. The legislature directs that there shall be full cooperation amongst the department, the Washington archaeological research center, and other agencies of the state.

Amended by Laws 1986, ch. 266, § 16.

Historical and Statutory Notes

1986 Amendment. At the beginning of the second sentence, substituted "director" for "preservation officer"; and, toward the middle of the third sentence, substituted "department" for "office".

Severability—Laws 1986, ch. 266: See Historical Note following § 38.52.005.

27.53.030. Definitions

Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of community development.

(5) "Director" means the director of community development or the director's designee.

(6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(8) "Professional archaeologist" means a person who has met the educational, training, and experience requirements of the society of professional archaeologists.

(9) "Qualified archaeologist" means a person who has had formal training and/or experience in archaeology over a period of at least three years, and has been certified in writing to be a qualified archaeologist by two professional archaeologists.

(10) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

Amended by Laws 1983, ch. 91, § 20, eff. June 30, 1983; Laws 1986, ch. 266, § 17; Laws 1988, ch. 124, § 2, eff. March 18, 1988; Laws 1989, ch. 44, § 6.

Historical and Statutory Notes

1983 Amendment. In subsec. (7), substituted the current RCW reference for "RCW 43.51A.060".

1986 Amendment. Inserted subsecs. (2) and (3); deleted former subsecs. (7) and (8); and renumbered former subsecs. (2) to (6) as (4) to (8). Former subsecs. (7) and (8) read:

"(7) 'Preservation officer' means the state historic preservation officer as provided for in chapter 27.34 RCW.

"(8) 'Office' means the office of archaeology and historic preservation."

1988 Legislation

Laws 1988, ch. 124, § 2, in the definition of "historic" added the second sentence; and added the definition of "historic archaeological resources".

Intent—Laws 1988, ch. 124: "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [Laws 1988, ch. 124, § 1.]

1989 Legislation

Laws 1989, ch. 44, § 6, inserted the definitions of "archaeological object" and "archaeological site".

Intent—Laws 1989, ch. 44: See § 27.44.030.

Captions not law—Liberal construction—Laws 1989, ch. 44: See §§ 27.44.900 and 27.44.901.

Application—Laws 1988, ch. 124: "This act shall not affect any ongoing salvage effort in which the state has entered into separate contracts or agreements prior to March 18, 1988." [Laws 1988, ch. 124, § 13.] For codification of "this act," see Parallel Reference Tables.

Severability—Laws 1986, ch. 266: See Historical Note following § 38.52.005.

Effective date—Laws 1983, ch. 91: See § 27.34.910.

Cross References

Contracts made in violation of indebtedness limitations void, see § 39.36.040.

Declaratory judgments, bond issues, see ch. 7.25.

Educational facilities and programs for state schools for the deaf and blind, see § 72.05.140.

Educational service districts,
  Generally, see ch. 28A.21.
  Deaf, mute, blind youth, reports of, see §§ 72.40.070, 72.40.080.
  Offices as nonpartisan, see § 29.21.080.
  Teachers' retirement system board of trustees, report to, see § 41.32.420.

Elections,
  Expenses of consolidated elections, sharing of costs, see § 29.13.045.
  Nonpartisan primaries, declarations of candidacy, see § 29.21.060.

Funds,
  County school fund, stock at large on highway, impounding, proceeds of sale to county school fund, see § 16.24.070.
  General school fund, school patrol uniforms, traffic signs and signals, insurance for, may be paid from, see § 46.61.385.
  Public school building bond redemption fund, motor vehicle excise fund distribution to, see § 82.44.150.
  Public school building bond retirement fund, motor vehicle excise fund distribution to, see § 82.44.150.
  School fund, fines and forfeitures paid into, see § 4.24.180.

Garnishment,
  Enforcement against, see § 7.33.060.
  Writ contents, see § 7.33.070.

Indebtedness,
  Limitation on levies, see Const. Art. 7, § 2 (Amend. 59); § 84.52.050.
  Limitations upon, exceeding limitations, capital outlays, see § 39.36.020.
  Limitations upon, liabilities incurred in violation void, see § 39.36.040.
  Limitations upon, limitations prescribed, see Const. Art. 8, § 6 (Amend. 27); § 39.36.020.

Lands,
  By school districts, see ch. 8.16.
  Parks and recreation commission, relinquishment of control over school lands, see § 43.51.210.

Public bodies may retain collection agencies to collect public debts, see § 19.16.500.

Pupils, residence or absence does not affect right to vote, see Const. Art. 6 § 4.

Purchases,
  Fuel, restriction on purchase or use of out-of-state fuel, penalty, see § 39.24.080.

27.53.040 **Archaeological resources—Declaration**

All sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material that are located in, on, or under the surface of any lands or waters owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state are hereby declared to be archaeological resources.

Added by Laws 1975, 1st Ex.Sess., ch. 134, § 4.

Library References

Health and Environment ⟾25.5.

C.J.S. Health and Environment §§ 61 et seq., 115 et seq.

Periodicals, postage, manner of payment, see § 42.24.035.
School districts,
  Limitations upon, exceeding limitations, capital outlays, see § 39.36.020.
  Limitations upon, liabilities incurred in violation void, see § 39.36.040.
  Limitations upon, limitations prescribed, see Const. Art. 8, § 6 (Amend. 27); § 39.36.020.
State toxicological laboratories, see § 68.08.107.
Student enrollment forecasts, biennial report of planning and community affairs agency, see § 43.63A.080(10).

27.53.045. Abandoned archaeological resources—Declaration

All historic archaeological resources abandoned for thirty years or more in, on, or under the surface of any public lands or waters owned by or under the possession, custody, or control of the state of Washington, including, but not limited to all ships, or aircraft, and any part or the contents thereof, and all treasure trove is hereby declared to be the property of the state of Washington.

Enacted by Laws 1988, ch. 124, § 3, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.060. Disturbing, etc., archaeological resource or site without written permit or permission unlawful—Conditions allowed—Exceptions

(1) On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director for such activities.

(2) The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior to issuance of the permit. The property owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency. The director, in consultation with the affected tribes, shall develop guidelines for the issuance and processing of permits. Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted. The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites.

Amended by Laws 1988, ch. 266, § 18; Laws 1988, ch. 124, § 4, eff. March 18, 1988; Laws 1989, ch. 44, § 7.

Historical and Statutory Notes

1986 Amendment. Throughout the section, substituted "director" for "preservation officer".

1988 Legislation

Laws 1988, ch. 124, § 4, rewrote the section, which formerly read:

"On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, American Indian or aboriginal camp site, dwelling site, rock shelter, cave dwelling site, storage site, grave, burial site, or skeletal remains and grave goods, cairn, or tool making site, or to remove from any such land, site, or area, grave, burial site, cave, rock shelter, or cairn, any skeletal remains, artifact or implement of stone, bone, wood, or any other material, including, but not limited to, projectile points, arrowheads, knives, awls, scrapers, beads or ornaments, basketry, matting, mauls, pestles, grinding stones, rock carvings or paintings, or any other artifacts or implements, or portions or fragments thereof without having obtained written permission from the director for such activities on public property or from the private landowner for such activities on private land. A private landowner may request the director to assume the duty of issuing such permits. The director must obtain the consent of the public property owner or agency responsible for the management thereof, prior to issuance of the permit. The director, in consultation with the Washington state archaeological research center, shall develop guidelines for the issuance and processing of such permits. Such written permission shall be physically present while any such activity is being conducted. The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground nor to the excavation and removal of artifacts from state owned shorelands below the line of ordinary high water or within the intertidal zone."

1989 Legislation

Laws 1989, ch. 44, § 7, divided the section into two subsections; in subsec. (1) rewrote the first sentence, which previously read:

"On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, including, but not limited to, American Indian or aboriginal camp site, dwelling site, rock shelter, cave dwelling site, storage site, grave, burial site, or skeletal remains and grave goods, cairn, or tool making site, or to remove from any such land, site, or area, grave, burial site, cave, rock shelter, or cairn, any skeletal remains, artifact or implement of stone, bone, wood, or any other material, including, but not limited to, projectile points, arrowheads, knives, awls, scrapers, beads or ornaments, basketry, matting, mauls, pestles, grinding stones, rock carvings or paintings, or any other artifacts or implements, or portions or fragments thereof without having obtained a written permit from the director for such activities on public property or written permission from the private landowner for such activities on private land.";

and deleted the last sentence which authorized a private landowner to request the director to assume the duty of issuing permits; and in subsec. (2) inserted "private or" preceding "public property" in the first sentence, at the beginning of the second sentence substituted "The property owner" for "The public property landowner", in the third sentence substituted "affected tribes" for "Washington state archaeological research center", and at the end of the last sentence added "or sites".

Intent—Laws 1989, ch. 44: See § 27.44.030.

Captions not law—Liberal construction—Laws 1989, ch. 44: See §§ 27.44.900 and 27.44.901.

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

Severability—Laws 1986, ch. 266: See Historical Note following § 38.52.005.

Severability—Laws 1977, Ex.Sess., ch. 195: See Historical and Statutory Notes note following § 27.53.030.

27.53.070 Field investigations—Communication of site or resource location to research center

It is the declared intention of the legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the Washington archaeological research center. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in RCW 42.17.310, as now or hereafter amended, to avoid site depredation.

Added by Laws 1975, 1st Ex.Sess., ch. 134, § 7. Amended by Laws 1975–76, 2nd Ex.Sess., ch. 82, § 3.

Historical Note

The 1975–76 amendment added the

27.53.080. Archaeological activities upon public lands—Entry—Agreement—Approval of activities

Qualified or professional archaeologists, in performance of their duties, are hereby authorized to enter upon public lands of the state of Washington and its political subdivisions, at such times and in such manner as not to interfere with the normal management thereof, for the purposes of doing archaeological resource location and evaluation studies, including site sampling activities. Scientific excavations are to be carried out only after appropriate agreement has been made between a professional archaeologist or an institution of higher education and the agency or political subdivision responsible for such lands. Notice of such agreement shall be filed with the Washington archaeological research center and by them to the department. Amateur societies may engage in such activities by submitting and having approved by the responsible agency or political subdivision a written proposal detailing the scope and duration of the activity. Before approval, a proposal from an amateur society shall be submitted to the Washington archaeological research center for review and recommendation.

Amended by Laws 1986, ch. 266, § 19.

Historical and Statutory Notes

1986 Amendment. At the end of the third sentence, substituted "department" for "office".

Severability—Laws 1986, ch. 266: See Historical Note following § 38.52.005.

27.53.090. Violations—Penalty

Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day of continued violation of any provision of this chapter shall constitute a distinct and separate offense. Offenses shall be reported to the appropriate law enforcement agency or to the director.

Amended by Laws 1986, ch. 266, § 20.

Historical and Statutory Notes

1986 Amendment. At the end of the last sentence, substituted "director" for "preservation officer".

Severability—Laws 1986, ch. 266: See Historical Note following § 38.52.005.

27.53.100. Historic archaeological resources on state-owned aquatic lands—Discovery and report—Right of first refusal

Persons, firms, corporations, institutions, or agencies which discover a previously unreported historic archaeological resource on state-owned aquatic lands and report the site or location of such resource to the department shall have a right of first refusal to future salvage permits granted for the recovery of that resource, subject to the provisions of RCW 27.53.110. Such right of first refusal shall exist for five years from the date of the report. Should another person, firm, corporation, institution, or agency apply for a permit to salvage that resource, the reporting entity shall have sixty days to submit its own permit application and exercise its first refusal right, or the right shall be extinguished.

Enacted by Laws 1988, ch. 124, § 5, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124. See Historical Note following § 27.53.030.

27.53.110. Contracts for discovery and salvage of state-owned historic archaeological resources

The director is hereby authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, persons, firms, or corporations for the discovery and salvage of state-owned historic archaeological resources. Such contracts shall include but are not limited to the following terms and conditions:

(1) Historic shipwrecks:

(a) The contract shall provide for fair compensation to a salvor. "Fair compensation" means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(b) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(c) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(d) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(e) The contract shall also provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the terms of the contract, title to all objects recovered shall revert to the state.

(2) Historic aircraft:

(a) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purpose of that salvage operation is to recover the aircraft for a museum, historical society, nonprofit organization, or governmental entity.

(b) Title to the aircraft may only be passed by the state to one of the entities listed in (a) of this subsection.

(c) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (a) of this subsection or such other compensation as one of the entities listed in (a) of this subsection and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(3) Other historic archaeological resources: The director, in his or her discretion, may negotiate the terms of such contracts.

Enacted by Laws 1988, ch. 124, § 6, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.120. Recovery of property from historic archaeological sites—Mitigation of damage—Refusal to issue salvage permit to prevent destruction of resource

The salvor shall agree to mitigate any archaeological damage which occurs during the salvage operation. The department shall have access to all property recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties following completion of the salvage operation. The department shall also have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

The director has the right to refuse to issue a permit for salvaging an historic archaeological resource if that resource would be destroyed beyond mitigation by the proposed salvage operation. Any agency, institution, person, firm, or corporation which has been denied a permit because the resource would be destroyed beyond mitigation by their method of salvage shall have a right of first refusal for that permit at a future date should technology be found which would make salvage possible without destroying the resource. Such right of first refusal shall be in effect for sixty days after the director has determined that salvage can be accomplished by a subsequent applicant without destroying the resource.

No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract.

Enacted by Laws 1988, ch. 124, § 7, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.130. List of areas requiring permits

The department of community development shall publish annually and update as necessary a list of those areas where permits are required to protect historic archaeological sites on aquatic lands.

Enacted by Laws 1988, ch. 124, § 10, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.140. Rule-making authority

The department of community development shall have such rule-making authority as is necessary to carry out the provisions of this chapter.

Enacted by Laws 1988, ch. 124, § 11, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.150. Proceeds from state's property—Deposit and use

Any proceeds from the state's share of property under this chapter shall be transmitted to the state treasurer for deposit in the general fund to be used only for the purposes of historic preservation and underwater archaeology.

Enacted by Laws 1988, ch. 124, § 12, eff. March 18, 1988.

Historical and Statutory Notes

Intent—Application—Laws 1988, ch. 124: See Historical Note following § 27.53.030.

27.53.901. Severability—1988 c 124

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Enacted by Laws 1988, ch. 124, § 14, eff. March 18, 1988.

CHAPTER 27.60—1989 WASHINGTON CENTENNIAL

Section
27.60.010. Intent—Commemoration of centennial encouraged.
27.60.020. 1989 Washington centennial commission created.
27.60.030. Travel expenses.
27.60.040. Duties of commission—Program for centennial.
27.60.045. Repealed.
27.60.050. Staff for the commission.
27.60.060. Expenditure of funds—Authority to earn certain income and accept gifts or grants.
27.60.070. Program to observe anniversaries of adoption of federal and state Constitutions.
27.60.080. State centennial license plates—Distribution of revenues—Expiration of section.
27.60.090. Use of logos, emblems, slogans, etc., adopted by commission—Limitations—Penalties.
27.60.900. Termination of commission.

27.60.010. Intent—Commemoration of centennial encouraged

November 11, 1989, will mark the centennial of Washington's admission to the Union. It is fitting that an event of this magnitude should be commemorated by the state of Washington. Such an event symbolizes achievement and growth and should remind the people of Washington that the past shapes our present and gives hope for a productive future. Therefore, every community of the state is encouraged to commemorate this historic event.

Enacted by Laws 1982, ch. 90, § 1.

27.60.020. 1989 Washington centennial commission created

(1) There is established the 1989 Washington centennial commission composed of twenty-five members selected as follows:

(a) Four members of the house of representatives appointed by the speaker of the house, two from each political party;

(b) Four members of the senate appointed by the president of the senate, two from each political party;

hm
The Heard Museum

June 6, 1990

Senator Daniel Inouye
Chairman, Select Committee on Indian Affairs
U. S. Senate
Washington, D. C. 20510

Dear Senator Inouye:

I am writing in regard to the proposed revision of S. 1980, for which a public hearing was held on May 14, 1990. On the suggestion of Luraleen MacGregor of your staff, I am submitting my comments about the proposed revision in writing, and I respectfully request that they be included in the public record of the hearing.

From late 1988 to early 1990, I participated as a panelist in the National Dialogue on Museum/Native American Relations. That dialogue, although at times contentious and frustrating, was successful. It demonstrated that individuals with strongly held differing views could find areas of mutual concern and could reach consensus on difficult topics. It is the workability of the dialogue process, as much as the recommendations in the Panel's report, that offers the greatest hope for developing sound approaches to the treatment of sensitive objects in museum collections.

During the Panel's dialogue, it became clear that concerns about sensitive materials in museum collections are indicative of a more fundamental and far-reaching need to reformulate the relationships between mainstream institutions and native communities. Dealing with sensitive materials as

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an isolated problem, solvable as a separate issue, is like cutting off the "tip of the iceberg"--more ice will surely float to the surface. As we search for solutions to these pressing controversies, we must simultaneously strive to address the larger and more pervasive issues of which these immediate problems are only a part.

Some have argued that transferring custodianship of objects and human remains from a museum to a native community diminishes the museum by draining its holdings, diminishes science by thwarting the quest for new knowledge, and diminishes society by depleting the heritage held in public trust. However, I believe that viewing issues of custodianship from a broader perspective will enable us to enrich our museums, our disciplines, and our society.

Many of us who work in museums do so because we are dedicated to the idea that museums are unique educational settings through which the history and distinctiveness of the many cultures and communities of this globe can be presented authoritatively to the public. Of course, this is the very concept that makes the establishment of the National Museum of the American Indian so promising. The cooperation and partnership that is the vision for of the new museum on the Mall must be reflected again and again in museums and cities throughout the nation.

A museum that is committed to lasting partnerships with native communities will benefit in many ways. An institution so engaged will be able to refine its roles with regard to its mission, its interpretation, and its management of collections in ways that are reflective of the concerns of its many constituencies. Such a commitment does not mean that the museum should become the passive vehicle for groups to voice their own points of view; rather, it means that constituent groups will have equal opportunity to contribute their perspective to the museum's message. This kind of partnership would make the museum the setting for ongoing open dialogue, occurring in an environment of mutual respect and commitment to the museum's mission.

In light of this potential, I feel that it is vital to find ways to control contentiousness as we rearrange relationships. If museums and native communities see each other as adversaries, we certainly will be diminished. In the present climate, attempting to establish long term relationships is a delicate process. I offer my comments in the hope that legislation designed to address the immediate problem can show awareness of, and support for, efforts to achieve larger goals.

From this perspective, I would like to comment on the proposed revision of S. 1980. In my remarks I have made strike-outs through existing language that I recommend changing and have underlined my suggested additions. My comments are in brackets:

Page 2, line 2: ...for ~~purposes of reinterment or other~~ disposition... [Here, as well as in other places in the legislation, there is the suggestion of return as the only recourse. While return, reburial, and repatriation certainly need to be recognized as possibilities, for real resolution--rather than appeasement--the whole spectrum of alternatives for reaching agreement should be available to the parties. Limiting resolution to a requirement for return removes the possibility of, for example, reaching cooperative custodial agreements.]

Page 3, line 6: ...return or treatment...

Page 3, lines 13-14: an individual who is ~~a member of~~ recognized by an Indian tribe as belonging to that Indian tribe... [This modification tries to address the fact that there are a large number of individuals who are Indian but who, for one reason or another, are not formally enrolled in their tribe and are therefore not "members" of a tribe, strictly speaking.]

Page 3, line 19: [I think the definition of "Indian tribe" is much improved over the earlier draft.]

Page 5, lines 7-10: [This seems like a very workable definition of "cultural affiliation," particularly as it stresses **continuity** of group identity.]

Page 5, line 15: ...ceremonies of the deceased's ~~a~~ culture...

Page 5, lines 17-18: ...reasonably associated with human remains ~~subject to return~~... [While I feel that this section (11(B)(i)) is unnecessary for the definition, the definition of funerary objects should not be restricted to only certain remains.]

Page 6, lines 1-3: ...which is, or has been, devoted to a Native American religious ceremony or which is or has been necessary for the continuing ~~employed in the~~ observance of such religious ceremony... [There are two key points here. "Necessary" replaces "employed" because there are many items--many blankets, moccasins, and rattles, for instance--which may be employed in a ceremony and yet are not of a character that their presence or absence affects a group's ability to continue the religion. As the intent of the bill, I believe, is to protect religious freedom, it would be regrettable to hinder progress in arguments over secular materials. The second point has to do with continuity. We know that humans are constantly inventing significant symbols. Yet, it would seem inappropriate to make museum collections subject to return without clear understanding that the purpose is to reestablish a link from the past to the future.]

Page 6, lines 4-10:...an item shown by available evidence to have continuing ~~having~~ historical or cultural importance to the Native American group or culture ~~which is associated with the Native American group itself, rather than property owned by an individual Native American,~~ and which, ~~therefore,~~ according to the established customs of the Native American group, cannot be legally alienated, appropriated or conveyed by an individual ~~Native American~~ regardless of whether or not the individual is a member of the Native American group. [Here again--and perhaps more significantly than for sacred objects--continuity is central. Reinvention of importance should not be an appropriate cause for return of collections. The other point brought out by this suggested revision has to do with the legal standards and property concepts that are applicable. I believe that it is right and proper to empower the Native American group to set the standards by which inalienability is judged.]

Page 8, lines 1-12: [The criteria by which ownership is established, and by which potentially competing claims are judged, seems to need clarification to avoid awkward situations in which, for example, materials which are culturally affiliated with the Hopi have come from the Navajo reservation. A minor modification that would seem to address this situation is to give priority to cultural affiliation (items 3, 4, and 5 renumbered to 1, 2, and 3).]

Page 9, line 1: When repatriation is to take place, the Secretary of the Interior...

Page 9, line 5:...which may have been acquired ~~excavated~~ under ... [Many of the items covered by the legislation were not excavated.]

Pages 10-12: [I feel that the procedures outlined for inventory are fundamentally fair. Such investigations can assist our understanding of the long human history in our country. While the inventory process will undoubtedly require substantial expenditures, the overall benefit is undeniable. An unanswered question in this section, however, is who will be responsible for the costs associated with the transfer of repatriated items. This cost will be sizable. It is also important to point out that the term "inventory" has the unfortunate implication that we already know all we need or care to know about the affected objects. When we inventory a painted Mimbres bowl or a carved Hohokam "palette" do we assume that they are funerary objects simply because such types of objects are commonly found associated with burials? Or do we need to establish the precise provenience for each item? Knowing what we have differs in important ways from knowing what we need to know in order to act in ways that are not simply expedient.]

Page 13, line 12: [I know that others have mentioned concerns over the need for clearer definition of "legal title" in this context. It is the pivotal concept in the legislation. Without presuming to offer a legally sound alternative, I only add my voice to those calling for clarification.]

Page 16, lines 6-7: [It is important for the committee to consult with groups representing all affected parties--Native American groups, anthropological groups, and museum groups alike--to insure that there is no inherent or apparent bias.]

I appreciate the opportunity to comment on this important legislative initiative. It is one that will have a lasting effect on the museums in this country. If there is any way I can be of further assistance to make this legislation the best it can be, please call on me.

Respectfully,

Peter H. Welsh
Chief Curator/Director of Research

cc: Senator John McCain
Ms. Luraleen MacGregor

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